Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®
ON THE MISSOULA PLAN

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SUMMARY

CTIA – The Wireless Association® ("CTIA") appreciates the valuable work of the state commissions that volunteered resources to the efforts of the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation ("Task Force") on long overdue intercarrier compensation reform. The success of any effort to reform the intercarrier compensation system must be judged by how it will benefit consumers. The Missoula Plan for Intercarrier Compensation Reform ("Missoula Plan" or "Plan"), which was developed by a small subset of industry stakeholders, would not serve the interests of consumers.

The Plan does not adequately address, and in many cases would exacerbate, the deficiencies exhibited by the current intercarrier compensation and universal service systems that the Federal Communications Commission ("Commission") is attempting to reform in this docket. The Missoula Plan would retard the accelerating development of intermodal competition and convergence by protecting the incumbent local exchange carriers ("ILECs") from these trends. The Missoula Plan's burdensome interconnection, intercarrier compensation and universal service provisions take direct aim against competitive carriers, particularly those attempting to deliver high-quality, lower-cost services to consumers located in high-cost, rural areas.

In its Further Notice of Proposed Rulemaking, the Commission set forth three primary reform goals: the promotion of economic efficiency; the preservation of universal service; and the elimination of artificial regulatory distinctions. CTIA's comprehensive Mutually Efficient Traffic Exchange ("METE") Proposal remains the best approach to promoting these goals. The METE Proposal would benefit consumers by creating incentives for providers to reduce costs and limiting universal service support to no more than what is necessary to provide affordable services to consumers in high-cost areas. It would also eliminate arbitrary, uneconomic

regulatory distinctions among technology platforms, categories of providers and different types of traffic.

Adoption of the Missoula Plan would not achieve the Commission's stated goals for reform. It would reduce efficiency by forcing providers into inefficient forms of interconnection, sanctioning above-cost monopoly rates for dominant ILEC services, and leaving in place vast differences in intercarrier rates. The Missoula Plan would undermine the goals of universal service by creating costly and discriminatory new mechanisms designed exclusively to enrich ILECs – without regard to the demands of consumers, the only intended beneficiaries of universal service. The Missoula Plan would not only retain but also create more regulatory distinctions that discriminate against competitors and, in particular, mobile wireless carriers.

To partially address these concerns, the Commission should:

- Retain the well-established and efficiency promoting single point of interconnection ("POI")-per-LATA network architecture regime envisioned in the Telecommunications Act of 1996.
- Reject proposed "Rural Transport Rules," and instead adopt a mutual and reciprocal obligation for interconnecting parties to assume the costs of delivering originating traffic to a terminating party's network Edge, as the METE Proposal defines network Edges.
- Establish cost-based rates, based on forward-looking economic costs, for intercarrier transport and transit services, thereby rejecting the Plan's proposed rate increases.
- Eliminate arbitrary regulatory distinctions between Track 1, 2, and 3 carriers in interconnection rights and obligations, intercarrier compensation rates, and end-user rates.

- Unify and reduce intercarrier rates to forward-looking cost-based rates and, ultimately, to bill-and-keep, and permit carriers to recover all of their network costs from their end users.
- Until full rate unification is achieved, retain the intraMTA rule for both wireless and wireline originated traffic. Immediately eliminate charges for the origination of traffic.
- Consolidate and reform the high-cost universal service system by determining support based on the forward-looking costs of the most efficient technology for a given geographic area and ensure that support is available to both incumbent and competitive eligible telecommunications carriers.

The Missoula Plan's overly complex interconnection and transport pricing rules, disparate intercarrier compensation rates and unnecessary subsidies to underachieving ILECs offer little improvement over the current dysfunctional, inefficient regime. In the absence of revisions to the Plan correcting its multiple flaws, the Commission should encourage a viable industry consensus along the lines of the METE Proposal that meets the Commission's reform goals.

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CTIA – The Wireless Association® ("CTIA") responds to The Missoula Plan for Intercarrier Compensation Reform ("Missoula Plan" or the "Plan") submitted by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation ("Task Force").[1] The Task Force is to be commended for its attempt to craft an industry consensus on long overdue intercarrier compensation reforms. The Missoula Plan, which was developed by a small subset of industry stakeholders, fails to offer adequate reform measures. The Commission should not accept the Missoula Plan without substantial revisions.

I. INTRODUCTION

The success of any intercarrier reform effort must be measured by how it benefits consumers. The Missoula Plan fails to serve consumers' interests because it does not adequately address and in many cases would exacerbate problems with the current intercarrier compensation

[1] Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, *et al.*, to the Hon. Kevin Martin, Chairman, Fed. Commun. Commiss., CC Docket No. 01-92 (July 24, 2006) ("Clark Letter") (attaching The Missoula Plan for Intercarrier Compensation Reform ("Missoula Plan") (July 18, 2006)). *See* FCC Public Notice, *Comment Sought on Missoula Intercarrier Compensation Reform Plan*, 21 FCC Rcd 8524 (2006).

and universal service systems. The Plan largely abandons the Commission's carefully considered reform principles by compounding the inefficiencies and anticompetitive burdens of the current regime.

As the Commission emphasized in its Further Notice of Proposed Rulemaking ("FNPRM") in this docket, "it is imperative that new rules accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete."[2] The Missoula Plan nevertheless inadequately addresses the needs of more than 219 million mobile wireless subscribers for the kind of network that can deliver competitively-priced, higher-quality and ubiquitous voice, data, and video services.[3] The Plan particularly overlooks the needs of prospective and current mobile wireless subscribers located in rural areas.

More generally, the Plan discriminates against competitive carriers and their customers and ignores the increasing convergence of wireless, wireline, VOIP and broadband services packaged in bundled offerings not defined by traditional intercarrier compensation categories. Outmoded regulatory distinctions are extended to IP-based and wireless services without regard to consumers' interests in intermodal competition and innovation.

Wireless service is now the predominant telecommunications service in the United States, with 1.5 trillion minutes of use in 2005 and about 40 million more subscribers than wireline

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[2] *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4702 (2005) ("FNPRM").

[3] *See CTIA's Semi-Annual Wireless Industry Survey, Annualized Wireless Industry Survey Results - June 1985 to June 2006* (2006), *available at* http://files.ctia.org/pdf/CTIAMidYear2006Survey.pdf.

service as of the end of 2005.[4] Ninety-eight percent of the U.S. population has access to three or more different wireless providers in counties where they live – although there remain difficult to serve, high-cost areas that justify availability of high-cost universal service support.[5] Moreover, consumers increasingly view wireless, as well as cable telephone and VoIP service, as viable alternatives to wireline service. According to one estimate, approximately ten percent of wireless users do not have wireline telephone service.[6] Meanwhile, it is anticipated that cable companies will serve more than 8.5 million voice lines by the end of 2006 and more than 13 million lines by year-end 2007, and analysts predict that cable companies will reach an overall telephony penetration rate of 15-20 percent by 2010.[7] Industry experts forecast that cable and VoIP together will have more than 11 million voice subscribers in the U.S. by the end of this year and that by the end of 2010, approximately 45 percent of U.S. households will either be wireless only or will use VoIP to make their calls.[8]

As wireless revenue per minute continues to decline, wireless rates and prices charged by other intermodal competitors have constrained wireline rates and reduced wireline's share of the

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[4] *See CTIA's Wireless Industry Indices: A Comprehensive Report on the State of the Wireless Industry Based on CTIA's Semi-Annual Data Survey Results, Year-End 2005 Results*, at 215, Table 115 (May 2006) ("*CTIA Indices*") (almost 1.5 trillion minutes of wireless traffic in 2005); Industry Analysis & Technical Division, FCC, *Local Telephone Competition: Status as of December 31, 2005*, at Table 1 (July 2006) (slightly over 175,350,000 wireline access lines as of the end of 2005).

[5] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eleventh Report, WT Docket No. 06-17, FCC 06-142, ¶ 41 (Sept. 29, 2006) ("*Eleventh CMRS Competition Report*").

[6] Comments of Verizon and Verizon Wireless at 6-7 & n.17, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Oct. 12, 2006) ("Verizon Comments").

[7] *Id.* at 4 & nn.6-7.

[8] *Id.* at 6 & n.16.

overall telecommunications market.[9] One analyst estimates that wireline carriers have lost 20 million access lines to wireless since 1999.[10] Increased competition, particularly from bundled offerings, reduced total telephone service prices 5.8 percent from 1998 to the beginning of 2005, while the cost of all consumer goods and services increased by 15.3 percent during the same period.[11] All of these developments are good news for consumers.

The Missoula Plan would respond to these developments by protecting incumbent local exchange carriers ("ILECs") from intermodal competition and consumer choice - achieving through regulation what cannot be obtained in the competitive marketplace. As competition for end users drives down retail rates and wireline market shares, the Plan's proponents would increase ILEC tandem transit and transport rates and provide a new subsidy to replace ILEC intercarrier revenues that eventually would have been lost to competition. The Plan also would impose expensive, burdensome interconnection and transport requirements on competitive carriers. Thus, competitive carriers seeking to deliver calls to ILECs for termination would face either excessive transit rates, in the case of indirect interconnections, or excessive transport rates and burdensome direct interconnection requirements.

In light of the technological and market trends, policy-makers should no longer view intercarrier compensation and universal service as ILEC or even primarily wireline issues, but should focus reform efforts on a more consumer-oriented approach. After consultation with its diverse membership, CTIA developed a plan for reforming the intercarrier compensation and

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[9] *Id.* at 7-8 & n.21. Wireless revenue per minute fell from $0.38 in 1996 to only $0.07 in 2005. *See Eleventh CMRS Competition Report* at Table 10.

[10] Verizon Comments at 7 & n.18.

[11] *See* FCC, *Statistics of Communications Common Carriers, 2004/2005 Edition*, at 144, Table 5.10 (Dec. 2005).

universal service systems that addresses the needs of consumers, its comprehensive Mutually Efficient Traffic Exchange ("METE") Proposal. It remains the best means of promoting the Commission's goals of realizing economic efficiency through intercarrier compensation and universal service regimes that maximize benefits for consumers and minimize administrative complexity. The METE Proposal and other similar approaches are equally as comprehensive as the Missoula Plan, but achieve reform in a forward-looking manner consistent with the Commission's objectives and the realities of today's telecommunications industry.[12]

The METE Proposal would regulate only in areas where market power can be exerted. It would primarily rely on commercial negotiations to arrive at efficient traffic exchange arrangements. The METE Proposal would benefit consumers by creating incentives for providers to reduce costs and limiting universal service support to no more than what is necessary to provide affordable services to consumers in high-cost areas. It would also eliminate arbitrary, uneconomic regulatory distinctions between technology platforms, categories of providers and different types of traffic (*e.g.*, wireless/wireline, rural/non-rural, price cap/rate-of-return, interstate/intrastate, and local/toll distinctions).

Now that wireless traffic is in rough parity with wireline traffic,[13] there is no reason, even from a purely wireline perspective, to maintain intercarrier charges at rates guaranteed by

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[12] For other pro-consumer plans, *see* Outline of Western Wireless Intercarrier Compensation Plan, attached to Letter from David L. Sieradzki, Counsel, Western Wireless Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 18, 2004) ("Western Wireless Plan"); Western Wireless Intercarrier Compensation Reform Plan, attached to Letter from David L. Sieradzki, Counsel, Western Wireless Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Jan. 28, 2005) ("Western Wireless PowerPoint); and U.S. Cellular Position Paper, *Rural America is On the Go*, CC Docket No. 01-92 (Jan. 7, 2005) ("USCC Principles").

[13] *CTIA Indices*, at 224, Table 122 (year-end 2005 traffic balance of 45 percent wireless-to-landline, 41 percent landline-to-wireless, and 14 percent wireless-to-wireless).

regulation and outside the scope of commercially negotiated agreements. It likewise makes little sense to provide - through regulation - intercarrier rates that favor certain categories of telecommunications providers. Wireless traffic will continue to grow, and wireline traffic likely will continue to fall. As net traffic flows become balanced and competition drives down intercarrier rates, the costs of tracking, billing and collecting intercarrier revenue inevitably will reduce and may even cancel out the value of intercarrier charges.

CTIA remains committed to working with other parties interested in meaningful, forward-looking reforms to the intercarrier compensation system. Rather than acting on a single niche proposal like the rural ILEC-oriented Missoula Plan, which is opposed by competitive local exchange carriers ("CLECs"), wireless providers, cable-based carriers, consumer representatives and even some ILECs, the Commission should encourage the development of more consumer-oriented industry consensus proposals, along the lines of the METE Proposal.

II. THE MISSOULA PLAN FALLS SHORT OF THE COMMISSION'S PRIMARY OBJECTIVES FOR INTERCARRIER COMPENSATION REFORM.

A. The Commission Endorsed Three Primary Goals For Intercarrier Compensation And Universal Service Reform.

The Commission set forth its intercarrier compensation and universal service reform goals in its FNPRM. The Commission commented that

> [T]he record confirms the need to replace the existing patchwork of intercarrier compensation rules with a unified approach. . . . [T]he current rules make distinctions based on artificial regulatory classifications that cannot be sustained in today's telecommunications marketplace. . . . These distinctions create both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions.[14]

[14] FNPRM, 20 FCC Rcd at 4687.

According to the Commission, any program of meaningful reform must:

(1) "promote *economic efficiency*," and in particular, the development of "facilities-based competition;"[15]

(2) *preserve universal service*, including expanded choices and lower rates for consumers;[16] and

(3) *eliminate artificial regulatory distinctions* unrelated to costs and advance competitive and technological neutrality.[17]

As the Commission explained in discussing the need for competitive and technological neutrality:

> [W]e favor an approach that provides regulatory certainty . . . and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences. Similar types of traffic should be subject to similar rules. Similar types of functions should be subject to similar cost recovery mechanisms.[18]

CTIA and other stakeholders identified similar goals for meaningful reform.[19]

Adoption of the Missoula Plan would not achieve the Commission's stated goals. First, it would reduce efficiency by imposing uneconomic, convoluted interconnection and transport requirements, fostering higher rates for dominant ILEC services and creating an unmanageable,

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15 *Id.* at 4701 (emphasis added).

16 *Id.* at 4702.

17 *Id.*

18 *Id.*

19 *See* Letter from Steve Largent, President and Chief Executive Officer, CTIA-The Wireless Association®, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 29, 2004) ("CTIA Principles").

complex regime that would leave in place vast differences in intercarrier rates. These complexities would absorb tremendous administrative and carrier resources, adding unnecessary costs and subverting incentives.

Second, these inefficient interconnection and transport requirements and nonaligned, excessive rates are structured to erect a buffer to protect ILECs, particularly rural ILECs ("RLECs"), against consumer demands for competitive alternatives. They rely on anachronistic distinctions among types of carriers and traffic to impose unique interconnection and transport burdens on competitive carriers, especially wireless providers that are bringing much needed facilities-based competition to rural areas.

Finally, the Restructure Mechanism ("RM") and the other subsidies proposed in the Plan would undermine any benefits of access revenue reductions by automatically replacing intercarrier compensation in such a manner as to guarantee ILECs more revenues than are available to them today. These new entitlements would be harmful to consumers, whose universal service pass-through contributions would increase to an unsustainable level, adding at least another 32 percent of the current funding requirement. The nonportability of the RM both violates Section 254 of the Communications Act of 1934 ("the Act"), which applies to universal service funds under any guise, and undermines intermodal competition, especially in rural areas.

B. The Missoula Plan Would Harm Consumers By Undermining Economic Efficiency.

1. The Missoula Plan's Interconnection And Transport Provisions Would Radically Revise The Regime Established Under The Telecommunications Act Of 1996.

The Missoula Plan would largely dismantle the well-established network interconnection regime envisioned in the Telecommunications Act of 1996 ("1996 Act"). The interconnection

and transport rules that have governed the exchange of local traffic for the past decade are summarized by the Wireline Competition Bureau in the *Virginia Arbitration Order*.

> [C]ompetitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA. The Commission's rules … prevent any LEC from assessing charges … for … traffic subject to reciprocal compensation that originates on the LEC's network…. [T]o the extent an incumbent LEC delivers to the point of interconnection its own originating traffic … subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.[20]

Moreover, the Commission's rules

> permit carriers providing transmission facilities between two networks to recover from the interconnecting carrier "only the costs of the proportion of that trunk capacity used by [the] interconnecting carrier to send traffic that will terminate on the providing carrier's network."[21]

These simple rules of the road help to minimize costs by providing incentives to each carrier to interconnect and deliver the local calls originated by its own customers in the most efficient manner possible. The Missoula Plan nevertheless ignores the Commission's stated goals and proceeds to fix one thing that is not broken by requiring an interconnecting carrier to deliver local traffic to every end office, point of presence ("POP") and trunking media gateway designated as a network "Edge" in each LATA served by an RLEC, and to every tandem switch

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[20] *See Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039, 27064 (WCB 2002) ("*Virginia Arbitration Order*").

[21] *Id.* at 27074 n.187.

designated as an Edge in each LATA served by a Regional Bell Operating Company ("RBOC") or other large ILEC.[22]

Implementation of the Plan would compromise the efficient interconnection architecture set forth in the Commission's rules, under which competitive carriers have chosen single point of interconnection ("POI")-per-LATA links with ILECs under Section 251(c) of the Act and the Commission's rules. Competitive carriers would bear the tremendous cost of duplicating otherwise suitable interconnections with terminating ILECs by installing trunks to multiple new Edge locations designated by the ILECs in each LATA. These disruptive and costly interconnection requirements can only raise the ultimate cost of all telecommunications services to consumers.

Moreover, if the interconnecting carrier purchases transport from the terminating carrier in order to deliver its traffic to the terminating carrier's Edge, the terminating carrier may charge its "interstate dedicated switched transport rates."[23] The Plan concedes that "there may be instances where certain transport rates and/or rate elements *will increase* to meet the ultimate rates under the Plan."[24] Thus, under the Plan, not only must an interconnecting carrier deliver its traffic to multiple Edges in each LATA, but it also may have to pay the terminating carrier premium transport rates for the privilege, yet another additional unnecessary cost.

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[22] Missoula Plan at III.A-B (pp. 41-46). The RBOCs and certain other large ILECs are classified as "Track 1 carriers." *Id.* at II.A (pp. 4-5). RLECs are divided into Track 2 and 3 carriers under the Plan. *Id.* at II.A (pp. 5-7).

[23] *Id.* at II.E.3.c.iii.1 (p. 31).

[24] *Id.* at II.B.2.a.iv (p. 14) (emphasis added).

2. The "Rural Transport Rules" And "Virtual Edge" Rule Would Impose Unprecedented And Costly Two-Way Transport Burdens On Competitive Carriers.

Interconnecting competitive carriers also would be burdened by the so-called "Rural Transport Rules," which would require an interconnecting competitive carrier to take financial responsibility for the delivery of local traffic *both* to and from a RLEC, typically to and from a point deep in the RLEC's service area.[25] Under the "modified Rural Transport Rule," an interconnecting competitive carrier would have the financial obligation for provisioning the interconnection transport to carry local traffic in both directions between its Edge and the "meet point" with a Track 2 or 3 RLEC, including any necessary tandem transit service.[26] The Plan provides that if the competitive carrier provisions dedicated transport through a direct interconnection arrangement, the RLEC will compensate the competitive carrier for 50 percent of the first ten miles of the capacity required to transport the RLEC's originating traffic from the meet point to the competitive carrier's Edge.[27] Under the "full Rural Transport Rule," however, a Track 2 price cap RLEC or Track 2 rate-of-return ("ROR") RLEC electing incentive regulation or rates no higher than rates charged by price cap or incentive regulation ILECs bears no such 50 percent compensation obligation.[28]

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[25] *Id.* at II.E.3.e (pp. 33-35). The Rural Transport Rules apply to "Track 1" carriers interconnecting with Track 2 and 3 RLECs. *Id.* The Track 1 carrier category includes all non-ILECs. *Id.* at II.A (p. 5).

[26] *Id.* at II.E.3.e.i, II.E.3.e.ii.2 (pp. 33-35). The "meet point" will generally be an existing meet point serving the exchange where the Track 2 or 3 RLEC's end office or tandem switch is located. *Id.* at II.E.3.e.i.5, II.E.3.e.ii.3 (pp. 33-35).

[27] *Id.* at II.E.3.e.i.4, II.E.3.e.ii.2 (pp. 33, 35).

[28] *Id.* at II.E.3.e.ii.1.d (p. 35).

These complex interconnection and transport pricing provisions would enable ILECs, particularly RLECs, to impose inefficient legacy wireline network costs on their competitors and customers. Moreover, the Plan provides that if an RBOC or other Track 1 ILEC and a competitive carrier continue to use an existing POI arrangement to exchange local traffic, the POI is renamed a "Virtual Edge," and the competitive carrier must provide the transport for traffic in both directions between its network and the Virtual Edge.[29] This two-way transport burden for non-rural service areas is similar to the burden imposed by the Rural Transport Rules.

3. Application Of The Missoula Plan's Interconnection Rules To Terminating Non-ILECs Would Violate Section 251(a).

Moreover, when a terminating carrier is *not* an ILEC, the Plan also rewrites Section 251 of the Act by giving an interconnecting carrier the sole right to decide whether it will connect directly or indirectly with the terminating carrier.[30] Thus, an interconnecting carrier could demand direct interconnection, irrespective of the terminating carrier's preference. Section 251, however, provides an interconnecting carrier no basis for an absolute right to interconnect directly with a terminating non-ILEC.

Section 251(c) provides carriers a right to interconnect directly at any technically feasible point only with a terminating ILEC. In the case of a terminating non-ILEC, Section 251(a) imposes only an obligation to interconnect "directly or indirectly" with any other carrier.[31] Although CMRS carriers "are obligated to comply with [Section 251(a)(1)], … *indirect*

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[29] *Id.* at II.E.3.d.ii.2 (pp. 32-33).

[30] *Id.* at III.A.1.e (p. 42).

[31] 47 U.S.C. § 251(a)(1).

interconnection … satisfies this obligation."[32] Thus, the interconnecting carrier cannot require direct interconnection if the terminating wireless carrier prefers to interconnect indirectly. Section 251 "create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved. . . . Imposing the section 251(c) obligations on a carrier that is not an incumbent LEC would contravene the carefully-calibrated regulatory regime crafted by Congress."[33] Thus, the Commission may not impose on a non-ILEC the direct interconnection requirements that Section 251(c) imposes only on ILECs. To the extent that its interconnection rules were applied to terminating wireless carriers, the Missoula Plan would exceed the Commission's authority.

* * * * *

In contrast to the costly, inefficient interconnection and transport rules in the Missoula Plan, CTIA's simple and non-discriminatory edge requirements in the METE Proposal would impose a mutual and reciprocal obligation on interconnecting parties to assume the costs of delivering originating traffic to whichever of the terminating party's self-defined network edges in a LATA that the interconnecting party chooses. The terminating carrier would assume responsibility for carrying, all the way to the end user, any call delivered to any of its edges in a LATA. The METE Proposal thus would not require the vast network reconfigurations that would be imposed by the Missoula Plan and would not impose one-sided transport obligations on competitive carriers. Moreover, intercarrier transport services would have to be offered at forward-looking economic cost-based rates.

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[32] *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Fourth Report and Order, 15 FCC Rcd 13523, 13528 (2000) (emphasis added).

[33] *Guam Public Utilities Commission Petition for Declaratory Ruling Concerning Sections 3(37) and 251(h) of the Communications Act*, 12 FCC Rcd 6925, 6937-38 (1997).

4. Excessive Tandem Transit Rates Proposed Under The Missoula Plan Would Inflate Costs And End User Rates.

Under the Plan, tandem transit rates would be higher than many carriers pay today. The Plan's transit rate "cap" of $0.0025 per minute of use ("MOU")[34] is hardly a meaningful cap. Furthermore, the transit rates under the Plan increase by inflation after the fifth year of the Plan. Even worse, rates for transit services provided entirely within a metropolitan area would be completely deregulated in the fourth year of the Plan without any showing of transit competition.[35]

Because of the ubiquity of RBOC and other Track 1 ILEC networks, they provide almost all of the tandem transit services used by competitive carriers today. When a carrier exercises dominant power in a service market, the rates for that service should be set on the basis of forward-looking costs. There is no showing that the transit rate cap of $0.0025/MOU is cost-based, and there is no justification for deregulating dominant service rates. The Missoula Plan's treatment of tandem transit services can only lead to unnecessarily higher costs for all consumers.

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Under the METE Proposal, ILECs would be required to provide tandem transit service to carriers with which they are directly interconnected on an efficient (*i.e.*, forward-looking) cost basis. Requiring ILECs to provide tandem transit service at their forward-looking costs is necessary to implement the right to indirect interconnection under Section 251(a) and would enable indirectly interconnected carriers to exchange traffic with optimal efficiency.

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34 Missoula Plan at III.D.4.b (p. 51).

35 *Id.* at III.D.4.e (p. 52).

5. The Missoula Plan Would Multiply, Rather Than Unify, Intercarrier Rates And Create An Administrative Nightmare.

a. The Plan Would Generate A Dizzying Array Of Intercarrier Rates.

With certain exceptions, Track 1 and 2 carriers would be authorized to declare, at the outset of the Plan, their ultimate rates at the end of the transition period *for each study area*, which may be between zero and the maximum rates set forth in the Plan.[36] Competitive carriers would be treated as Track 1 carriers for most purposes under the Plan.[37] Carriers could set different originating and terminating rates, and ROR Track 2 RLECs would have different rate caps from price cap Track 2 RLECs.[38] Track 3 RLECs would be required only to reduce all rates to the level of their interstate access rates, unless their intrastate access or reciprocal compensation rates were lower.[39] Access and reciprocal compensation rates would not be unified for Track 3 RLECs.[40] Because Track 3 interstate rates would not be constrained in any way,[41] each of the approximately 1,100 Track 3 RLECs could have different rates.[42]

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36 *Id.* at II.B.1.b.i, II.B.2.a.i (pp. 10, 12).

37 *Id.* at II.A (p. 5).

38 *Id.* at II.B.1.a.i, II.B.1.b.i, II.B.2.a.i (pp. 8, 10, 12-13).

39 *Id.* at II.B.3 (p. 18 & n.5).

40 *Id.* at II.B, II.B.3.b, II.E.5.b.ii (pp. 8, 18-19, 37 n.11).

41 *See id.* at II.B.3.a (p. 18).

42 Billy Jack Gregg, Director, Consumer Advocate Division, West Virginia Public Service Commission, Presentation at Federal Communications Bar Association/Continuing Legal Education Seminar: *The "Missoula" Intercarrier Compensation Plan -- Pros and Cons* (Sept. 27, 2006) (estimating number of Track 3 carriers as 1,100).

The almost infinite variety of rates that this scheme would encourage is the antithesis of the rate unification that is the primary goal of this proceeding and achieves none of the simplification that could reduce carriers' administrative and compliance costs. Reciprocal compensation rates for traffic exchanged between two ILECs of different tracks are governed by each track's terminating rates.[43] Although reciprocal compensation rates governing traffic exchanged between ILECs and competitive carriers are nominally symmetrical,[44] special rules for calls to or from wireless providers, discussed below, override the general symmetricality of rates governing exchanges of traffic between ILECs and non-ILECs. The resulting vast disparity among rates would preserve and accentuate the outdated, arbitrary and uneconomic regulatory distinctions among technology platforms, categories of providers, and different types of traffic that generate arbitrage and that must be eliminated in any meaningful reform.

The Missoula Plan also would result in different subscriber line charge ("SLC") caps for different categories of subscribers in Track 1, 2, and 3 ILEC study areas, with the highest cap for all Track 1 subscribers and multi-line business Track 2 subscribers.[45] Moreover, Track 1 ILEC SLCs may increase with inflation starting at Step 5 of the Plan, while Track 2 and 3 ILEC SLCs may not increase with inflation.[46] Customers in low-cost, non-rural Track 1 ILEC service areas should not pay higher end-user charges than customers in high-cost, rural Track 2 and 3 service areas, as the Missoula Plan provides. Section 254 of the Act requires comparability and

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43 Missoula Plan at II.E.5.a.ii (p. 36).

44 *Id.* at II.E.5.a.iii (p. 36).

45 *Id.* at II.C.1 (pp. 20-21).

46 *Id.* at II.C.1.a.iv (p. 20), II.C.1.b.iv (p. 21).

affordability without regard to whether a customer is served by a ROR or price cap ILEC.[47] Higher, inflation-adjusted SLC caps in low-cost urban areas than in rural, high-cost areas cannot be justified.

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The true unification envisioned by the METE Proposal would eliminate the need to make such distinctions. Under a bill-and-keep system, all carriers would recover their costs from their own end users and, if justified, the universal service program. Even rate unification short of bill-and-keep would be a vast improvement over the Missoula Plan. Elimination of the different tracks, including the separate treatment of wireless providers, elimination of originating access rates, unified reciprocal compensation and terminating access rates and symmetrical reciprocal compensation rates would go a long way toward the efficient intercarrier rate regime envisioned in the FNPRM. Finally, under the METE proposal, SLC caps are uniform, and retail rates are deregulated in competitive markets.

b. The Missoula Plan Would Absorb Vast Regulatory And Administrative Resources.

The tortuous intercarrier compensation, interconnection and transport rules summarized above, if adopted, would require almost limitless regulatory resources and vastly expand carriers' administrative and compliance burdens, all of which would pile up additional costs to be recovered in end-user rates, with no accompanying benefits, thereby inflicting a dead-weight economic loss on consumers. The Plan would multiply, rather than unify, interconnection and compensation rules, with exceptions to exceptions raising ambiguities and creating internal inconsistencies.

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[47] 47 U.S.C. § 254(b).

The complex pricing variations and asymmetric rules governing reciprocal compensation and wireless/wireline traffic in the Plan would require the continuation of all of the tracking, billing, record exchange and record keeping burdens of the current system. Rather than the "minute is a minute" approach permitted under true rate unification, the Plan continues to require that terminating carriers keep track of originating carrier categories (carrier track and technology) in order to bill correctly. The Plan then attempts to cure the billing problem it perpetuates with an awkward "phantom traffic" proposal, also discussed below, imposing new administrative burdens on the Commission and all carriers.

The Plan's complexities also would result in massive state-by-state arbitration proceedings. Specifically, the Plan overrides the reciprocal compensation rates established by state commissions and the rates established in interconnection agreements that permit modifications in accordance with changes in law.[48]

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The pure simplicity of the METE proposal would make it virtually self-enforcing, allowing service providers to "regulate" each other through privately negotiated interconnection and traffic exchange agreements and thereby reducing costs. The METE Proposal, unlike the Missoula Plan, reflects an approach "favor[ed]" by the Commission, that "provides regulatory certainty . . . and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences."[49]

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[48] Missoula Plan at II.B (p. 8).

[49] FNPRM, 20 FCC Rcd at 4702.

C. The Missoula Plan Picks Winners and Losers, Thereby Depriving Consumers Of The Benefits Of A Competitive Market.

The interconnection, intercarrier compensation, and universal service provisions discussed above not only would generate inefficiencies and unnecessary costs, but they also would favor incumbent wireline carriers at the expense of wireless and other competitive carriers and their customers. Other aspects of the Plan reinforce these competitive disadvantages.

1. The Plan's Asymmetric, Discriminatory Transport Pricing And Interconnection Rules Would Prevent Rural Competition.

The Rural Transport Rules and other one-sided transport charge and interconnection requirements discussed above would confer a tremendous competitive advantage on ILECs, especially RLECs, vis-à-vis competitive carriers. Moreover, by making it too costly for wireless providers to interconnect with ILEC networks, those requirements would threaten intermodal competition, particularly in rural areas.

a. Generally, Only Competitive Carriers Would Experience The Burdens Imposed By Various Interconnection And Transport Obligations.

The Missoula Plan imposes unique burdens on competitive carriers by classifying them as Track 1 carriers, treating them as if they were similar in size, scope and network configuration to the RBOCs. Competitive carriers, however, cannot match the vast, ubiquitous networks of the RBOCs and are dependent on their interconnections with terminating RLECs to deliver calls in rural areas. Consequently, competitive carriers would bear a disproportionate burden from the transport and interconnection obligations imposed on all Track 1 carriers vis-à-vis the RLECs.

Competitive carriers would not be disadvantaged merely because they do not have the size and scope of Track 1 ILECs. Several interconnection and transport rules in the Plan

nominally applicable to all Track 1 carriers, or to all carriers generally, actually would have an impact almost entirely limited to competitive carriers because, for the most part, they are the only carriers affected by the rule. Classifying competitive carriers as Track 1 carriers thus tends to disguise the uniqueness of the transport and interconnection burdens that would be borne by competitive carriers under the Plan.

For example, the burdensome Edge rules nominally apply to any interconnecting carrier exchanging "non-access" traffic with an ILEC,[50] but, except for unusual circumstances, only competitive carriers exchange "non-access," *i.e.*, interconnected local, traffic with ILECs. ILECs serving their franchised service territories generally do not exchange local calls because, by definition, they serve separate local exchanges. Typically, the only calls exchanged between ILECs are toll calls, not subject to the Edge rules in the Missoula Plan. ILECs thus do not need to interconnect with other ILECs to exchange local traffic. The tremendous costs of installing costly transport links to multiple Edges of every terminating ILEC, described above, would typically be borne only by interconnecting competitive carriers, most of whom could not afford the required massive network reconfiguration.

Similarly, the Rural Transport Rules discussed above nominally apply to any Track 1 - RLEC traffic,[51] but Track 1 ILECs generally do not exchange local traffic with RLECs. The only Track 1 carriers affected by those rules thus would be competitive carriers because, for the most part, those are the only carriers exchanging local traffic with RLECs. Track 1 ILECs would almost never be in that situation. Only competitive carriers would be required to provide transport in both directions for local traffic that they exchange with RLECs. Although the Edge

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[50] Missoula Plan at III (p. 41).

[51] *Id.* at II.E.3.e (pp. 33-35).

requirements and Rural Transport Rules are presented as neutral rules imposing obligations on all carriers, or all Track 1 carriers, they in fact burden solely wireless and other competitive carriers exchanging local calls with ILECs.

b. The Asymmetric Obligations Imposed By The Rural Transport Rules Would Compound The Anticompetitive Impact Of Other Rules.

The unique obligations imposed by the Rural Transport Rules on competitive carriers compound the anticompetitive effects of the artificially inflated tandem transit rate "cap" discussed above. The Rural Transport Rules impose financial responsibility on an interconnecting Track 1 carrier for any necessary transit service in both directions for traffic it exchanges indirectly with an RLEC.[52] A Track 1 ILEC, however, would not routinely exchange local calls indirectly with an RLEC and thus would not pay tandem transit rates in both directions under these provisions. Because only competitive carriers, for the most part, would pay tandem transit rates in both directions, the Rural Transport Rules discriminatorily increase interconnection costs for those carriers. Under those rules, RLECs also rarely would purchase tandem transit service, thereby insulating RLECs from the transit rate increases envisioned under the Plan.

Moreover, the Rural Transport Rules effectively would reduce the compensation received by a competitive carrier from an RLEC for terminating a local call. The Rural Transport Rules would require the competitive carrier to pay for the intercarrier transport necessary to deliver the RLEC customer's call to the competitive carrier's Edge.[53] The competitive carrier thus could

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52 *Id.* at II.E.3.e.i.3, II.E.3.e.ii.1.c (pp. 33-34).

53 *Id.* at II.E.3.e.i.2, II.E.3.e.ii.1.b (pp. 33-34).

retain only a portion of the reciprocal compensation paid by the originating RLEC for the termination of a local call because it would have to pay the intercarrier transport cost (or a pro rata portion of the cost) for the call. Thus, when an RLEC pays reciprocal compensation to a wireless carrier, the wireless carrier would earn something less than the full reciprocal compensation rate, net of intercarrier transport costs.

2. The Plan's Proposed Modifications To The IntraMTA Rule And Related Intercarrier Pricing Provisions Would Prevent Wireless Carriers From Competing In Rural Areas.

Under the intraMTA rule, any call to or from a wireless carrier's customer with end points entirely within a single Major Trading Area ("MTA") is treated as a local call subject to the Commission's reciprocal compensation rules.[54] When the Commission adopted the intraMTA rule, it correctly concluded that specific wireless local service areas for intercarrier compensation purposes must be established because wireless service areas are federally-mandated, vary in size and do not match wireline service areas that state regulators typically base upon the location of wireline rate centers.[55] Thus, the intraMTA rule simply ensures that customers are not subject to toll charges for inter-modal calls made within the wireless carrier's local service area.

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[54] 47 C.F.R. § 51.701(b)(2).

[55] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd 15499, 16014 (1996) (subsequent history omitted).

a. The Missoula Plan Would Eviscerate The IntraMTA Rule, Resulting In Asymmetric IntraMTA Wireline-Wireless Compensation.

The Missoula Plan would subvert intermodal competition by arbitrarily revising the intraMTA rule to create unbalanced intercarrier payments that substantially favor ILECs and discourage wireless competition, particularly in rural areas. Under the Plan, wireline-to-CMRS traffic generally is subject to reciprocal compensation only where the calling and called numbers are in the same wireline rate center, as opposed to the same MTA, and the call is not routed to an interexchange carrier ("IXC") with a toll service relationship with the calling party. All other intraMTA wireline-CMRS calls are treated as toll calls. IntraMTA CMRS-to-wireline traffic, however, continues to be subject to reciprocal compensation if the call is not routed through an IXC.[56]

The discriminatory impact of this proposed asymmetric local calling area rule can only be fully understood in light of the peculiar intercarrier compensation rules reserved for wireless and other competitive carriers under the Plan. Wireless carriers would be allowed to charge IXCs terminating access rates equivalent to Track 1 terminating rates when terminating toll traffic originated by any carrier.[57] For the direct exchange of local calls between an ILEC and a non-ILEC, including ILEC-CMRS exchanges, however, the non-ILEC could charge the same terminating rate as the ILEC.[58] For example, in the case of a local call to a non-ILEC customer

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[56] Missoula Plan at II.D.2.a.ii, II.D.3.b (pp. 26-27, 28-29).

[57] *Compare id.* at II.D.3.c (pp. 29-30) (CMRS provider may charge $0.0005/MOU to terminate IXC traffic), *with* II.B.1.a.i (Track 1 carrier's ultimate terminating rate is $0.0005/MOU).

[58] *Id.* at II.E.5.a.iii (p. 36).

originated by a Track 2 ROR ILEC, the non-ILEC could charge the same termination rate as the Track 2 ROR ILEC, which typically would be substantially higher than the Track 1 termination rate.[59]

The Plan does not provide symmetrical compensation rates for non-ILECs, however, for the majority of intraMTA calls between ILEC and wireless customers. Under the Plan's modified intraMTA rule, an intraMTA call by a wireline subscriber to a CMRS number in a different rate center could be routed through an IXC and treated as a toll call, allowing the originating ILEC to collect originating access charges.[60] In the case of an originating ROR RLEC, the originating access charges would be relatively high, while the terminating CMRS provider collected only the CMRS provider's lower terminating charge from the IXC.[61]

A call in the reverse direction between the same two numbers, however, would be treated as a local call, for which the originating CMRS provider could collect no originating access charges and would still pay the high ROR RLEC reciprocal compensation rates to a terminating ROR RLEC.[62] Thus, the proposed change to the intraMTA rule would largely turn it into a one-

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[59] *See, e.g., id.* at II.B.2.a.i.1.a (p. 13) (Track 2 ROR ILECs may charge terminating rates of $0.0105/MOU for tandem switching and common transport and $0.0005/MOU for end office switching). *See also id*. at II.B.2.c.ii (p. 15) (Track 2 ILEC's reciprocal compensation rates will be set at terminating rates).

[60] *Id.* at II.D.2.a.ii.1 (pp. 26-27).

[61] *See, e.g., id.* at II.B.2.a.i.1.b (p. 13) (Track 2 ROR ILECs may charge originating access rates as high as $0.0105/MOU for tandem switching and common transport and $0.002/MOU for end office switching). *See also id.* at II.D.2.a.ii, II.D.2.c (pp. 26-27) (wireline carrier originating intraMTA call to wireless number in different rate center could assess originating access charges), II.D.3.c (pp. 29-30) (terminating wireless provider could charge IXC $0.0005/MOU).

[62] *See, e.g., id.* at II.B.2.a.i.1.a (p. 13) (Track 2 ROR ILECs may charge terminating rates as high as $0.0105/MOU for tandem switching and common transport and $0.0005/MOU for end office switching). *See also id*. at II.B.2.c.ii (p. 15) (Track 2 ILEC's reciprocal compensation

way street, with intraMTA wireless-to-wireline calls typically treated as "local" calls, as under the current rule, while most intraMTA wireline-to-wireless calls are treated as toll calls.

The ILECs' ability to collect originating access charges under the Plan's modified intraMTA scheme would be especially lucrative because intraMTA wireline-CMRS calls would be treated as toll calls. More generally, the availability of originating access would provide ILECs with an incentive in other calling scenarios to route traffic to IXCs in order to collect access revenues, thereby maintaining the inefficiencies and unnecessary costs of the current regime.

b. The Plan's Asymmetric IntraMTA Rule And Disparate Rate Structure Would Harm Both Intermodal Competition And Numbering Resource Conservation.

The combination of the Plan's intraMTA rule and intercarrier compensation rules would make it more expensive for wireline customers to call wireless customers, thereby depressing wireless-bound traffic, relative to wireless-to-wireline traffic, and suppressing demand for wireless services. By treating many more intraMTA wireline-to-CMRS calls as toll calls, rather than local calls, wireline customers would have to pay long distance charges in more cases to call relatively nearby wireless customers. Potential wireless customers would be less willing to sign up for wireless service in rural areas if the carrier could not provide a locally dialed number for wireline callers in the same MTA, enabling nearby callers to make local calls to the customer.

By enabling ILECs to convert intraMTA calls to toll calls, for which they charge originating access, they also could collect additional RM support under the revised rule for

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rates will be set at terminating rates), II.D.3.b.i.1 (p. 28) (wireless originated intraMTA call to wireline number subject to reciprocal compensation).

subsequent required reductions in those access charges.[63] Substituting RM support for originating access revenue also would subsidize ILEC competition with other unsubsidized carriers, yet another anticompetitive effect of the Plan.

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The Missoula Plan provides no rationale for upsetting the intraMTA rule, which has been applied consistently by the Commission and upheld by the courts and has worked well.[64] Under the METE Proposal, the intraMTA rule would be retained until it is mooted by rate unification, thereby ensuring parity in wireline - CMRS and CMRS - wireline calling costs and efficient use of numbering resources. Following a transition, the METE Proposal would eliminate charges for the origination or termination of calls (except for intercarrier transport and transit services). This approach would remove any incentive for the inefficient call routing and arbitrage fostered by the current regime and that would be compounded by the Missoula Plan.

D. The New Subsidies Proposed In The Missoula Plan Would Harm Consumers By Undermining Competition And Threatening The Sustainability Of The Universal Service Program.

1. By Automatically Replacing "Lost" Intercarrier Revenue, The New Restructure Mechanism Would Encourage Inefficiency.

Under the Missoula Plan, support provided by the new RM automatically replaces any intercarrier revenue "lost" from required access charge reductions and, for ROR ILECs, required

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63 *See, e.g., id.* at II.B.2.d.i.3 (p. 16) (Track 2 ILEC may recover from increased SLCs and RM its originating access reductions).

64 47 C.F.R. § 51.701(b)(2); *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256, 1264 (10th Cir. 2005).

net reciprocal compensation reductions.[65] RM support for ROR ILECs is keyed to embedded costs -- *i.e.*, what they spend, rather than whether they serve customers in high-cost areas -- further rewarding the most inefficient carriers.[66] The Commission has long acknowledged that using embedded costs to allocate universal service support would

> discourage prudent investment planning because carriers could receive support for inefficient as well as efficient investments. . . . [T]he use of embedded cost to calculate universal service support would lead to subsidization of inefficient carriers at the expense of efficient carriers and could create disincentives for carriers to operate efficiently.[67]

By subsidizing ILECs' declining wireline long distance market share, the RM would encourage inefficiency by rewarding carriers that have failed to evolve and adapt to market developments. By assuring incumbent carriers that they will be made whole, the Plan would forgo the consumer benefits of efficiency incentives and would ensure that legacy monopolistic inefficiencies that characterize the current regime would continue in perpetuity. A permanent guaranteed revenue stream guarantees that consumer welfare will not be maximized.

No provision of the Act or Commission rules guarantee ILEC revenues and earnings. Rather, the universal service principles set forth in Section 254(b) of the Act properly focus on benefits to *consumers*, not on the *carriers* that may be serving those consumers.[68] In *Alenco*, the U.S. Court of Appeals for the Fifth Circuit confirmed that:

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[65] Missoula Plan at VI.A.1.a-d (pp. 64-73), VI.A.1.e.ii (pp. 73-74) (ROR ILECs also recover RM for reductions in reciprocal compensation revenue).

[66] *See id.* at VI.A.1.e.iii.1 (p. 74) (RM support for ROR ILECs based partly on "actual interstate switched access revenue requirement").

[67] *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8901 (1997) (subsequent history omitted) ("*USF Order*").

[68] 47 U.S.C. § 254(b).

> The Act does not guarantee all local telephone service providers a sufficient return on investment. . . . So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.[69]

The RM thus is an extra-legal proposal, with no foundation in the Act or Commission precedent.

Moreover, the RM is a "heads ILECs win, tails consumers lose" proposition. For example, the RM counts intercarrier revenue losses but does not factor in most or all new ILEC revenue sources or cost savings as a result of intercarrier compensation reform, *e.g.*, interconnection savings and transit revenue increases for ILECs under the Plan.[70] The RM does not merely ensure revenue neutrality; it would make ILECs *better off* than they were prior to the Plan, particularly in the case of ROR ILECs, whose RM support is based on net intercarrier revenue reductions, irrespective of whether those reductions result from loss of customer lines.[71]

The Missoula Plan also would create additional profit guarantees for ILECs. The RM continues the disincentives inherent in the existing embedded cost support mechanisms by guaranteeing ROR RLECs an 11.25 percent rate of return,[72] the same as the federal high-cost guaranteed rate-of-return for ILECs.[73] This rate of return is based on the RBOC cost of capital

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69 *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir., 2001) ("*Alenco*").

70 *See generally* Missoula Plan at VI.A (pp. 64-76). *See also, e.g., id.* at VI.A.1.a.i (p. 64), VI.A.1.b.ii.4.a (p. 65), VI.A.1.b.v (p. 68) (other than SLC revenue and intercarrier compensation for certain EAS traffic, RM formula does not subtract other new or increased revenues or decreased payments).

71 *See id.* at VI.A.1.e (pp. 73-74) ("[a]ny shortfall" in ROR ILEC intercarrier revenue not recovered through SLC increases will be recovered through RM support).

72 *See, e.g., id.* at VI.A.1.e.iii.1 (p. 74).

73 *See, e.g.*, USF Order, 12 FCC Rcd at 8913 (forward-looking high-cost support for non-rural carriers); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of*

in 1990.[74] The 11.25 percent return was based on the RBOCs' 8.8 percent cost of debt in 1990.[75] In comments filed with the Joint Board on October 15, 2004, CTIA reported that RLECs had an average cost of debt of only 5.46 percent, which has not significantly changed in the intervening two years.[76] This cost of debt allows RLECs to earn a 15.06 percent return on equity from the universal service mechanisms.[77] In addition, CTIA's review of Form 492 reports submitted by ROR ILECs for 2004 revealed that many of them had profits far in excess of the prescribed rate of return. There is no evidence that these elevated universal service-enhanced profits necessarily translate to improved services in high-cost areas. Instead, they arguably enrich carriers, while increasing the overall size of the fund to the detriment of other carriers and consumers, who must contribute higher universal service charges.

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In contrast, CTIA has proposed combining the five current high-cost universal service mechanisms into a single, unified mechanism. Support would be based on the forward-looking

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Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, 16 FCC Rcd 19613, 19701-02 (2001) ("*MAG Order*") (interstate common line support for ROR RLECs).

[74] *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 5 FCC Rcd 7507, 7517 (1990), *aff'd on recon.*, 6 FCC Rcd 7193 (1991).

[75] *Id.* at 7508.

[76] This interest rate is the ratio of rural carrier interest payments divided by rural carrier long term debt. *See* Rural Utility Service, U. S. Dept of Agriculture, *1998 Statistical Report: Rural Telecommunications Borrowers*, Table 1: National Summaries of Rural Telecommunications Borrowers. The 1998 report was the last report released by the Rural Utility Service.

[77] Using the rural carriers' debt/equity ratio and the authorized rate of return and rearranging the rate-of-return formula, the return on equity is calculated as: 15.06% = (11.25% - (5.46% * 39.73%))/60.27% or return on equity = (rate of return – (average cost of debt * debt percentage))/equity percentage.

costs of the most efficient technology, whether wireline or wireless, in each geographic area, rather than a carrier's "revenue requirements." Incumbent and competitive eligible telecommunications carriers ("ETCs") would receive the same level of "per line" support and would lose support if they lose customers, as in a competitive market. This approach would target the minimum support necessary to ensure affordable service to customers in high-cost areas, thereby providing incentives to cut costs and efficiently provide service to high-cost customers. Consumers would benefit from lower universal service contribution fees and lower end user rates.

New universal service support funds should not be created without first addressing problems with the current universal service mechanism, which, as CTIA detailed in previous filings, already overcompensates RLECs.[78] Instead of burdening the unsustainable universal service high-cost program with even more funding obligations, the Commission should replace the current potpourri of high-cost funds with the unified universal service mechanism set forth in the METE Proposal.

2. The Missoula Plan Proposes A Variety Of ILEC Benefits Unrelated To Reform.

The Missoula Plan includes a host of new subsidies for ILECs, in addition to the RM, including increases to *existing* universal service mechanisms that have no relation to intercarrier compensation reform. Collectively, these subsidies would serve to insulate ILECs, especially RLECs, from any risk of competition, discourage efficiency and burden consumers.

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[78] *See, e.g.*, Comments of CTIA - The Wireless Association® at 32-38, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (May 23, 2005).

(a) The "incentive" regulation program bulges with disincentives to efficiency. A ROR RLEC that elected to participate in the new incentive regulation program would no longer be subject to ROR regulation but would be allowed to recover the same revenue per line that it did under ROR regulation and, incredibly, to obtain RM support if could not do so. It would also be allowed to raise interstate rates under a low-end formula adjustment mechanism.[79]

(b) The Early Adopter Fund -- which, like the RM, must be funded by ratepayers -- would be used to reimburse states that have distributed state funding to carriers reducing their intrastate access rates. The Missoula Plan projects an initial annual funding of at least $200 million for the Early Adopter Fund.[80]

(c) The adjustments to the existing universal service high-cost funds proposed in the Missoula Plan are unnecessary and bear no logical relationship to intercarrier compensation or universal service reform. Increasing universal service support absent additional efficiency incentives would increase the burden of universal service without ensuring any additional benefits for customers in high-cost areas. Increasing the universal service rural High-Cost Loop Support ("HCLS") fund, recalculating the basis for HCLS,[81] or giving certain price cap RLECs that do not now qualify for rural high-cost support an election to qualify for non-rural high-cost loop support[82] cannot be justified. There is also no need to "supplement the existing safety valve

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79 Missoula Plan at VII (pp. 80-82).

80 *Id.* at VI.B (pp. 76-77).

81 *Id.* at VI.C.1, VI.C.2 (p. 77).

82 *Id.* at VI.C.4 (p. 78).

support mechanism" or to "create a supplemental safety valve mechanism to provide additional revenue recovery…."[83]

3. The Cornucopia Of Subsidies Proposed In The Missoula Plan Would Impose A Crushing Contribution Burden, With No Demonstrable Benefits For Consumers In High-Cost Areas.

The universal service and related provisions of the Plan focus more on achieving "revenue-neutrality" for ILECs than on consumer welfare. Taken together, the RM, the universal service adjustments and other subsidy programs proposed in the Plan would initially increase all carriers' and customers' contribution obligations by at least an additional 32 percent of the current overall universal service funding requirement.[84] Moreover, that additional funding requirement is equivalent to a staggering 55 percent of the current universal service high-cost program.[85] That is just the beginning of the bad news for consumers. Under the Missoula Plan, the high-cost universal service mechanisms would increase further over time.

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[83] *Id.* at VI.C.5 (pp. 78-79).

[84] *See* The Missoula Plan: Policy and Legal Overview, Exh. 1, Assumptions for Developing Customer Impact Under Per Unit Based Contribution Methodology versus the Current Revenue Based Contribution Methodology (attached to Clark Letter) (showing additional $2.225 billion annual support for RM and other new support funds over current annualized universal service program costs of $6.97 billion).

[85] According to the most recent proposed contribution factor announcement, the high-cost program accounts for slightly more than 58 percent of total universal service funding. *See* FCC Public Notice, *Proposed Fourth Quarter 2006 Universal Service Contribution Factor*, 21 FCC Rcd 10120, 10121 (2006) ("Factor Notice") (fourth quarter 2006 projected demand for high-cost program is $922,344,000, and projected demand for total universal service funding is $1,587,633,000). Thirty-two percent of total universal service funding therefore comes to about 55 percent of high-cost funding.

If the contribution base were to remain constant, these additional support funds would drive the total contribution factor to an unsustainable level of 12 percent.[86] Wireless customers contribute about a third of the total universal service fund, while receiving less than about 13 percent of the benefits.[87] Thus, the wireless industry has a significant interest in controlling the growth of the fund. As the courts have acknowledged in *Qwest* and *Alenco*, "excessive subsidization arguably may affect the affordability of telecommunications"[88] by imposing excessive universal service fees on customers and causing end user rates "unnecessarily to rise," which "can itself violate the Act."[89] Whether or not the RM is technically a universal service program, the net financial effect of the RM would be the same as in the case of any new universal service fund -- consumers ultimately would pay high universal service-type pass-through charges. The RM and other new subsidies in the Plan, in violation of the Act, would add

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[86] The current contribution factor is 9.1 percent. *See* Factor Notice, 21 FCC Rcd at 10120. Adding another 32 percent would bring the total contribution factor to slightly over 12 percent.

[87] *See* Industry Analysis & Technical Division, FCC, *Telecommunications Industry Revenues 2004*, at 3, Chart 2, Share of Universal Service Contributions By Principal Type of Contributor (preliminary contribution data for first quarter 2006) (Mar. 2006), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-264669A1.pdf; USAC *Universal Service Facts*, *available at* http://www.usac.org/about/universal-service/fund-facts/fund-facts.aspx (total fund size); *Distribution of High Cost Support between Wireless and Wireline CETCs*, *available at* http://www.universalservice.org/_res/documents/about/pdf/fundfacts-High-Cost-Support-Between-CETCs-1998-2006.pdf; component High Cost, Low Income, Rural Health Care, and Schools & Libraries data from Fourth Quarter 2006 FCC Filing appendices (HC05, LI01, RH09, and SL17); and prior year data from the *Universal Service Administrative Company 2004 Annual Report* at 27, and *Universal Service Administrative Company 2005 Annual Report* at 43.

[88] *Qwest Communications International v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) ("*Qwest*").

[89] *Alenco*, 201 F.3d at 620; *see also USF Order*, 12 FCC Rcd at 8900.

a tremendous contribution burden that would suppress demand more than the misallocated benefits could possibly preserve.[90]

4. The Subsidies Proposed In The Missoula Plan Are Not Needed To Fund Broadband Deployment And Provide No Benefits To Consumers.

The subsidies and excessive intercarrier compensation rates proposed in the Plan are not necessary to fund widespread broadband deployment, as the Plan proponents have suggested.[91] The Commission consistently has found that broadband deployment is occurring at a rapid pace. That broadband can be deployed in sparsely populated rural areas without significant subsidies is illustrated by an article in Network World that features a fixed wireless broadband system installed by Netago Wireless serving a small Canadian farming town of fewer than 3,000 people. Netago provides fixed WiMAX service, with monthly plans priced from $35 (U.S.) -- about the same as DSL service.[92] In the absence of market failure, it would be premature to directly fund broadband deployment through unlawful implicit intercarrier compensation subsidies or through explicit universal service subsidies.

To the extent that any universal service support is needed, broadband deployment depends on constraining the growth of, and ensuring the competitively neutral distribution of, universal service and related support funds by targeting portable support based on forward-looking costs to high-cost areas. Particularly in areas with inadequate wireline service,

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[90] *Alenco*, 201 F.3d at 620.

[91] *See* The Missoula Plan: Policy and Legal Overview at 2 (attached to Clark Letter) (Missoula Plan would enable carriers to earn "adequate revenues" to "bring the benefits of broadband to more rural communities").

[92] J. Cox, *WiMAX Takes Root in Canadian Farming Town*, NetworkWorld (Oct. 5, 2006), *available at* http://www.networkworld.com/news/2006/100506-wimax-hanna.html?page=1.

widespread broadband penetration depends on fully portable, targeted support that benefits wireless as well as wireline customers in high-cost areas. In proposing these additional subsidies, the Plan's proponents ignore that universal service (and any program that operates like universal service) should benefit consumers, not carriers.[93] Consumers can benefit from carrier subsidies only if conditions are imposed on the distribution of the subsidies that spur efficient investment and operations.

5. The Nonportability Of The RM Is Illegal And Anticompetitive.

As Congress and the courts have directed, high-cost universal service mechanisms "must treat all market participants equally – for example, subsidies must be portable – so that the market … determines who shall compete for and deliver services to consumers."[94] The Plan, however, defers to "the future" any consideration as to the availability of RM support to non-ILECs.[95] Discriminating against wireless and other competitive carriers in the distribution of access revenue replacement mechanisms would give significant cost-recovery advantages to wireline incumbent carriers, providing artificial incentives for consumers to purchase ILEC wireline services and discouraging market entry by more efficient and innovative competitors.

The Commission has held that universal service support must "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor or disfavor one

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93 *See Alenco*, 201 F.3d at 620-21.

94 *Alenco*, 201 F.3d at 616.

95 Missoula Plan at VI.A.2 (p. 74).

technology over another."[96] The unavailability of RM support to wireless providers violates the competitive and technological neutrality required by Commission and judicial precedent.

It is legally indefensible to deny RM support to wireless carriers on the grounds that RM is "access replacement," rather than universal service, and that wireless carriers never collected access charges. The Plan's proponents "seek . . . not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from competition, the very antithesis of the Act."[97] Access replacement, whether designated RM or some other term, is universal service support by another name and must be available to all carriers on a competitively neutral basis.

For example, the Interstate Common Line Support mechanism was created in the *MAG Order* "to *replace* implicit support in the *interstate access*" rate structure.[98] Similarly, the $650 million Interstate Access Support fund was created in the *CALLS Order* to "*replac[e]* the subsidies" implicit in interstate access charges "with explicit . . . universal service support."[99] The RM, "designed to replace" access and other intercarrier revenues,[100] is no different from these other universal service high-cost funds created to "replace" support previously provided through access charges and made available to all ETCs. Moreover, aside from Section 254 of the Act, the Commission has no authority to assess carriers to raise subsidies. If the RM is not

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96 *USF Order*, 12 FCC Rcd at 8801.

97 *Alenco*, 201 F.3d at 622.

98 *MAG Order*, 16 FCC Rcd at 19617 (emphasis added).

99 *Access Charge Reform*, 15 FCC Rcd 12962, 12975 (2000) ("*CALLS Order*") (emphasis added), *rev'd and remanded in part on other grounds, Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), Order on Remand, 18 FCC Rcd 14976 (2003) .

100 Missoula Plan at VI (p. 63).

universal service, no carrier or consumer should be required to contribute to it. Conversely, any fund to which telecommunications carriers must contribute under Section 254 must be made available to all ETCs on a neutral basis under Sections 214(e) and 254(e) of the Act.[101]

Taken together, the RM and ILEC discretion to choose intercarrier rates, discussed above, would enable ILECs to choose how much revenue they can extract from their competitors in the form of intercarrier charges and how much they can draw from support funds. The RM would allow ILECs to manipulate their intercarrier rates to collect higher access charges from carriers that are not in a position to avoid them and lower charges (reimbursed through higher subsidies) from carriers that might be able to avoid them through other competitive strategies. Moreover, the access rate reductions funded by RM support also would facilitate ILECs' suppression of competition, similar to the anticompetitive effect of cross-subsidies. The RM thus could be deployed as yet another anticompetitive weapon.

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The METE Proposal would ensure that universal service support -- to the extent needed -- is available to all competitive as well as incumbent ETCs and is distributed in a manner not susceptible to manipulation. If support is distributed properly, according to the number of high-cost lines served by each ETC, portability will not increase the overall size of the fund, but only the number of carriers receiving support in each area. In order to preserve the fund, however, incumbent ETCs must lose support when they lose customers, just as competitive ETCs do.

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[101] *See Alenco*, 201 F.3d at 616; 47 U.S.C. §§ 214(e), 254(e).

E. The Missoula Plan's Phantom Traffic Proposal Would Impose Burdensome Procedures And Misallocate Traffic.

Phantom traffic rules and procedures are unnecessary for effective intercarrier compensation reform. Once rates are unified, the origin of a call is irrelevant, precluding any potential phantom traffic issues. The inclusion of a phantom traffic proposal in the Missoula Plan underscores its failure to address the Commission's intercarrier compensation reform goals. Moreover, the phantom traffic proposal appears to be inconsistent with other aspects of the Plan and would impose unnecessarily burdensome procedures.

1. The Phantom Traffic Rules In The Plan Appear To Be Inconsistent With The Local Calling Area Rules.

The phantom traffic proposal appears to require an intermediate carrier in an interconnected call "chain" to transmit the Jurisdictional Information Parameter ("JIP") field in the call signaling information it passes along to subsequent carriers, at least if JIP data is passed along initially by the preceding carriers in the chain.[102] The JIP identifies the location of the caller's serving switch or, in the case of a wireless call, originating mobile switching center ("MSC"). CTIA opposes mandatory population of the JIP field because it is costly and requires significant investment in legacy circuit-switched networks that ultimately will be unnecessary after intercarrier compensation rates are unified.

Moreover, even if the JIP is populated with the originating MSC, the mobility of wireless services might preclude the accurate identification of the jurisdiction of a wireless call, preventing the resolution of traffic jurisdictional disputes. Mandatory transmission of the JIP would impose an unnecessary burden on intermediate carriers that is not justified by increased

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[102] Missoula Plan at V.A.2.b (p. 56).

jurisdictional certainty, particularly in the case of wireless calls. CTIA, however, otherwise supports the proposed requirement that intermediate carriers transmit all call signaling information received from prior carriers in the chain.[103]

Furthermore, the mandatory JIP for intermediate carriers and the Plan's proposal that call-detail records provide information disclosing the jurisdiction of the call indicate that the actual physical locations of the caller and called party (or, in the case of the JIP, the location of the caller's serving switch) are central to a determination of the appropriate billing for the call.[104] That aspect of the Plan appears to be at odds with the proposed rules allocating traffic for the assessment of either access charges or reciprocal compensation, which are based entirely on the telephone numbers of the caller and called party.[105] As the Plan concedes, the parties' telephone numbers "do not always reliably identify end users' actual locations," especially in the case of wireless calls.[106] If the telephone numbers of the calling and called parties govern, there is no need for the JIP or call-detail records detailing the physical locations of the parties.

2. The Phantom Traffic Proposal Would Impose Unnecessary And Burdensome Procedures.

Additional enforcement procedures or penalties for phantom traffic rule violations, as the Plan envisions,[107] are unnecessary. The Commission's current enforcement procedures under Section 208 of the Act can efficiently and effectively address alleged violations of any new

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[103] *Id.*

[104] *See id.* at V.D.4.g.ii (p. 61).

[105] *Id.* at II.D (pp. 25-30).

[106] *Id.* at p. 25.

[107] *Id.* at V.C (p. 59).

phantom traffic rules. A requirement that "chronic" violators interconnect directly (and in many cases, inefficiently) with terminating carriers is particularly prone to abuse and burdensome litigation.[108]

Moreover, the Plan offers no justification for a proposed interim requirement that originating carriers provide call-detail records to tandem transit providers, nor is there a stated basis for the proposed $0.0025 per record fee -- on top of the excessive tandem transit rates discussed above -- that originating carriers would pay to tandem transit providers that supply call-detail records to terminating carriers. Both proposals should be rejected.

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[108] *Id.* at V.C.4.c (p. 59).

III. CONCLUSION

The Missoula Plan is antithetical to the pro-consumer, procompetitive, efficient approach to reform preferred by the wireless industry, and by the Commission. The Plan's overly complex interconnection and transport pricing rules, disparate intercarrier compensation rates and unnecessary subsidies to underachieving ILECs offer little improvement over the current dysfunctional, inefficient arbitrage-inducing regime. The Commission should not adopt the Missoula Plan unless the fatal flaws summarized in these comments are corrected. In the absence of revisions to the Plan, the Commission should encourage a viable industry consensus along the lines of the METE Proposal that meets the Commission's reform goals.

Respectfully submitted,

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