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November 4, 2006

EX PARTE – VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *In the Matter of Developing a Uniform Intercarrier Compensation Regime*, CC Docket No. 01-92

Dear Ms. Dotch:

Please accept for filing the errata contained within the documents transmitted herewith.

On October 25, 2006, General Communication, Inc. ("GCI") filed comments in the above-captioned proceeding via the Commission's Electronic Comment Filing System. Due to inadvertent administrative error, the filed comments included typographical errors on pages i, 8, 24, 40, 44, 49, 50, 67, 70, and 75. Accordingly, a corrected version of the comments is retransmitted herewith. In addition, GCI is transmitting redline versions of each of the aforementioned pages showing the corrections that were made.

The undersigned may be contacted should you have any questions or require additional information.

Respectfully submitted,

Maureen Flood
Federal Regulatory Attorney

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recognize that the final birthing of the Missoula Plan was through a closed-door process, with the price of entry being full pre-commitment to the plan. Given the substantial violence the proposals do to sound competitive principles, GCI along with many other interested parties could not afford this price. As a result, the vast majority of the supporters of the Missoula Plan are ILECs, and in particular, rural ILECs, which had a seat at the table. By contrast, the Missoula Plan is fervently opposed by a broad range of interest groups, including competitive local exchange carriers ("CLECs"), wireless carriers, cable providers, and consumers. GCI urges the Commission to reject the Missoula Plan and adopt a rational intercarrier compensation reform package that earns broad support from both industry and consumers.

II. INTERCARRIER COMPENSATION

A. By Forgoing Competitive Neutrality, the Missoula Plan Cannot Fulfill Any of the Commission's Goals for Intercarrier Compensation Reform.

The Commission has articulated three principal goals for intercarrier compensation reform:

1. promoting economic efficiency;
2. preserving universal service; and
3. achieving competitive and technological neutrality.[5]

Based on GCI's experience in Alaska, competitive neutrality is the most important of these three goals, because competitive neutrality is a necessary precondition for an intercarrier compensation regime that is both efficient and consistent with the preservation of universal service. For instance, in the absence of competitive neutrality,

[5] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd. 4685, 4702 (2005) ("*2005 Unified Intercarrier Compensation FNPRM*").

originating and terminating charges that can be assessed by Track 1 and Track 2 carriers, no such limitation is placed on a Track 3 carrier's interstate access charge rates. Hence, all of a Track 3 carrier's intercarrier compensation rates could increase during the life of the plan.[28] Importantly, under the Missoula Plan, a Track 3 carrier's interstate switched access charges – which effectively place a cap on its intercarrier compensation rates – will remain much higher than the uniform rates that will be charged by Track 1 and Track 2 carriers, as set forth above.

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GCI's concern is that by allowing Track 3 carriers to charge significantly higher intercarrier compensation rates than their Track 1 and Track 2 counterparts, the Commission threatens to undermine the long-held federal and Congressional commitments to geographic rate averaging and rate integration, as embodied in Section 254(g) of the Telecommunications Act of 1996 ("the 1996 Act").[29] Section 254(g) provides, in pertinent part,

> Within 6 months after February 8, 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

The Commission's rules implementing Section 254(g)'s geographic rate averaging and rate integration requirements ensure that carriers offer the same long distance rates and plans to consumers in rural and high cost areas, including non-contiguous States and

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[28] This aspect of the Missoula Plan is extremely discriminatory to consumers in Track 3 markets. Since Track 3 carriers' intercarrier compensation rates may not be reduced under the plan, Track 3 carriers may increase their SLCs without even experiencing a corresponding reduction in intercarrier compensation revenues.

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[29] 47 U.S.C. § 254(g).

feasible point within the [ILEC's] network." The ILECs have not – and cannot – demonstrate that interconnection at the end office is not technically feasible given that GCI has successfully interconnected at end offices throughout Alaska with no harm to the ILECs. Indeed, the Commission's own rules acknowledge this fact, in that they require an ILEC to provide interconnection "at any technically feasible point within the incumbent LEC's network including, at a minimum: (i) The line-side of a local switch; and (ii) The trunk-side of a local switch…."[51] Thus, unilaterally forcing GCI to interconnect at a new, ILEC-designated point such as an access tandem – without demonstrating that interconnection at the end office is not technically feasible– violates both the statute and the Commission's implementing rules.

B. The Missoula Plan's Transport Rules Disproportionately Favor Rural ILECs by Shifting Their Costs to Competitors.

The Missoula Plan also imposes a new set of rules regarding interconnection transport charges. Under the Commission's existing rules, "transport" is defined as "transmission and any necessary tandem switching . . . from the interconnection point between the two carriers to the terminating carrier's end office switch" (or equivalent) that serves the called party."[52] Moreover, each carrier is financially responsible for the transport required to take its originating traffic to a point (usually, a switch) on the terminating carrier's network.

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The Wireline Competition Bureau has defined the originating transport duty as follows:

[51] 47 C.F.R. § 51.305(a)(2).

[52] 47 C.F.R. § 51.701(c).

too expensive to be competitive in the marketplace. The net effect is that the Missoula Plan's transport provisions, if enacted, would erect significant barriers to entry in rural markets.[58]

C. The Commission Should Not Rewrite its Interconnection Rules.

The Missoula Plan proponents have not shown any link between intercarrier compensation reform and the Commission's interconnection rules. The proposed dismantling of the current interconnection regime is wholly unnecessary and unrelated to steps necessary to implement intercarrier compensation reform.

As a threshold matter, the Missoula Plan guarantees revenue neutrality for all ILECs. In other words, there is no economic impact on an ILEC when it reduces its terminating rates for non-access traffic, because it retains the same level of revenue that it once received from interstate access, intrastate access, and reciprocal compensation through a combination of increased subscriber line charges ("SLCs") and distributions from the new Restructure Mechanism. Thus, while Track 1 and Track 2 rate-of-return carriers may see their rates for the termination of non-access traffic decline, the Missoula Plan will not affect their overall revenues. And if the Track 1 and Track 2 RoR carriers'

[58] GCI suspects that the rural ILECs sought this overhaul of the Commission's transport rules based on disputes over transiting service with the RBOCs in the lower 48. To be more specific, rural ILECs often send originating traffic that will terminate with non-ILEC carriers through RBOC transiting arrangements, because they lack direct interconnection arrangements with competitive carriers (*i.e.*, CLECs, wireless carriers, cable companies). The RBOCs historically provided the rural ILECs with preferential rates for transiting service. Recently, however, the RBOCs have sought to increase the transiting rates paid by rural ILECs. Rather than attempting to negotiate a reasonable arrangement with the RBOCs, the rural ILECs saw the Missoula Plan as an opportunity to protect themselves from increased transport costs by shifting these costs to competitive carriers. GCI believes that it is particularly inappropriate to allow a dispute between the RBOCs and the rural ILECs in the lower 48 change the interconnection rules in Alaska given that: (1) Alaska has no RBOCs; and (2) Alaska has no tandem transit arrangements.

However, to the extent that the Commission eventually undertakes true intercarrier compensation reform, and adopts a transitional version of the Restructure Mechanism to prevent rate shock, any such mechanism must be portable among all ETCs.

As a threshold matter, it is important to identify the appropriate legal basis for the Restructure Mechanism, which is notably missing from the Missoula Plan. GCI expects that the rural ILEC supporters of the Missoula Plan will argue that it is an access charge replacement mechanism subject to the requirements of Sections 201 and 205[63]. In reality, however, the only authority for collecting contributions for the establishment of the Restructure Mechanism is Section 254(d) of the 1996 Act, which provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[64] In other words, if the Restructure Mechanism is purely an access charge mechanism independent of universal service, then there is no lawful mechanism for collecting revenues from telecommunications carriers to fund it. The rural ILECs have

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increases, unlike the Restructure Mechanism, do not violate the principal of competitive neutrality. SLCs, unlike the Restructure Mechanism, do not erect barriers to entry. Because SLCs are recovered from the ILEC's own end user customers, the SLC does not provide a subsidy solely to the ILEC. To the contrary, a CLEC such as GCI can charge its own customers a retail rate that is comparable to the ILEC's retail rate plus the SLC. Hence, the ILEC has no inherent cost advantage. More importantly, however, a CLEC can enter a market and undercut an ILEC's retail rates –including the SLC – to the extent that the CLEC is more efficient. This is exactly what happened in Alaska, where GCI maintained its own retail rates when ACS raised retail rates in Anchorage. Thus, SLC increases – unlike the Restructure Mechanism – are not permanent, and will be eroded over time through the development of competition.

[63] 47 U.S.C. §§ 201, 205.

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[64] 47 U.S.C. § 254(d).

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not, and cannot, identify any such authority under Sections 201 and 205. So it necessarily must be analyzed for compliance with Section 254.

As a universal service mechanism subject to Section 254, the Restructure Mechanism must be portable among all ETCs. In the *Universal Service First Report and Order,* the Commission established the principle of portability, holding that "[a] competitive carrier that has been designated as an eligible telecommunications carrier shall receive universal service support to the extent that it captures subscribers' lines formerly served by an ILEC receiving support or new customer lines in that ILEC's study area."[65] In the case where the competitor captures a line, it receives the same level of universal service support as the ILEC.[66] In enacting this portability requirement, the Commission "conclude[d] that paying the support to a competitive eligible telecommunications carrier that wins the customer or adds a new subscriber would aid the entry of competition in rural study areas," since it would not subsidize one provider (*i.e.,* the ILEC) to the detriment of all others. Portability was subsequently upheld by the Fifth Circuit Court of Appeals, which rejected the rural ILECs' argument that portability violated Section 254(e)'s command to provide "sufficient" universal service support:

> The purpose of universal service is to benefit the customer, not the carrier. "Sufficient" funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy….. What petitioners seek is not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from competition, the very antithesis of the Act.

[65] *In the Matter of Federal-State Joint Board on Universal Service,* First Report and Order, 12 FCC Rcd. 8776, 8932 (1997).

[66] *Id.*

the Alaska ILECs' interstate returns. Intrastate access rates in Alaska are much higher than the corresponding interstate rates. Alaska ILECs, moreover, are permitted to earn up to an 11 percent intrastate rate-of-return, which in this era of increased efficiency and declining costs is quite high, while simultaneously benefiting from low Rural Utility Service-financed debt. GCI therefore believes that the Alaska ILECs also are earning more than a reasonable rate of return on their intrastate access services, even assuming that their rates of return are near the state-prescribed 11 percent.

The Missoula Plan would perpetuate ILEC overearning by ensuring that all rate-of-return ILECs – which includes every ILEC in the State of Alaska – continue to recover their existing revenues from interstate access, intrastate access, and reciprocal compensation, on a dollar-for-dollar basis, through increased SLCs and the new Restructure Mechanism. However, as described herein, ILEC revenue guarantees violate the principle of competitive neutrality and, by extension, eliminate the ILECs' incentive to reduce their costs, and increase their efficiency, in response to competitive entry. The net result is that the ILECs never face any incentive to reduce their reliance on the existing level of USF support. In short, the Missoula Plan not only forces consumers to contribute an additional $2.225 billion to universal service – a 32 percent increase in the current $7 billion USF – it eliminates any mechanism that would reduce the level of required support over time.

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B. The Commission Should Not Presume that ILECs Are Entitled to Recover Lost Intercarrier Compensation Revenues through Universal Service Mechanisms, Because Doing So Fosters Over-Reliance on the USF.

As discussed herein, one of the fundamental shortcomings of the Missoula Plan is that it presumes that ILECs are entitled to their existing levels of universal service current system rewards State regulatory policies that increase eligibility for federal support and impermissibly burden the USF, in violation of Section 254(f).

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These flawed policies are embedded in the Missoula Plan, which compensates ILECs – on a dollar for dollar basis – for their existing intercarrier compensation revenues. Thus, to the extent that the rural ILECs are currently recovering a large percentage of their "costs" through implicit subsidies embedded in intercarrier compensation rates – and not from their end user customers – they will continue to receive the same subsidies under the Missoula Plan. This is particularly troubling given evidence that the ILECs are recovering more than their costs, as shown by their overearnings for interstate switched access services. The Missoula Plan, moreover, perpetuates the difference between urban and rural rates by retaining higher SLCs in non-rural (*i.e.,* Track 1) markets than in rural (*i.e.,* Track 2 and Track 3) markets. This approach is backward: SLCs should be higher in markets where the cost of service is greater or, at the very least, they should be commensurate with the SLC charged by Track 1 carriers.

There is no evidence that increasing rural rates to an affordability benchmark will have a detrimental impact on subscribership levels, and by extension, universal service. For instance, in Wyoming, monthly rates are among the highest in the country, but subscribership also is among the highest in the country. Wyoming's rates in its *lowest* priced non-rural area exceed all but two of the rates reported in the Commission's urban rate survey.[89] However, as of March 2006, Wyoming's in-unit telephone subscribership

[89] Qwest Wyoming's retail residential rates, including SLCs, fees, and taxes, range from $33.17-$42.28, depending on the rate zone. *See Federal-State Joint Board on Universal Service,* Federal Joint Petition of the Wyoming Public Service Commission and the

amount of revenue per line through the Restructure Mechanism. Why, for example, should a Track 2 or Track 3 carrier cut its costs and earn more from its rates when it can simply earn a federally mandated rate-of-return that is funded by the USF? The incentive regulation portion of the Missoula Plan also could be characterized as "no risk, all reward" because it allows an electing carrier to ask the Commission for a rate increase if its rate of return falls below 10.25 percent. Competitors such as GCI do not operate with such revenue guarantees. The bottom line is that real incentive regulation must place ILEC revenues at risk.

The most offensive aspect of the "incentive regulation" opportunity provided to Track 2 rate-of-return carriers is that it allows them to take advantage of the Full Rural Transport Rule, which shifts all of the carrier's transport costs between its network and that of a competitor to the competitor. GCI sees no reason that Track 2 rate-of-return carriers electing "incentive regulation" should benefit from the Full Rural Transport Rule, for two reasons. First, there is no logical connection between the Full Rural Transport Rule and incentive regulation. A Track 2 carrier that transitions from rate-of-return regulation to incentive regulation will not face an increase in its transport costs that would justify allowing it to shift a greater percentage of those costs to its competitors. Second, carriers electing incentive regulation reap the benefits of lower transport costs without forfeiting revenue guarantees. In other words, the combination of policies conveys significant benefits to electing carriers without any corresponding benefits to consumers, who are prevented from enjoying the benefits of competition.

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