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Executive Summary

The Missoula Plan represents a tremendous effort on the part of multiple parties and reflects valuable concepts that merit review by the Commission. This plan to reform intercarrier compensation represents what the Commission had requested to be delivered: an industry solution to a vexing problem.

In short, the Commission seeks reform that promotes economic efficiency, preserves universal service, is competitively and technologically neutral, addresses network interconnection issues, and meets any legal authority hurdles.

We believe that appropriate goals also include that the reform plan should minimize arbitrage opportunities and be resistant to gaming, as well as enable the ubiquitous deployment of broadband facilities by the private sector in rural America.

The provision of telecommunications in the highest cost to serve areas of the country is inherently risky and capital intensive. In evaluating intercarrier compensation cost recovery issues, the Commission should not attempt to ignore its consistent record evidence of the last decade that rural costs are different.

The unrecovered embedded costs of investment in the rural carriers' network facilities are real costs that will continue to be borne by the rural carriers. If carriers are not permitted to recover these costs, such actions would ultimately be deemed confiscatory and subject to review under the Takings Clause.

Any changes to access rates that result in revenues that do not recover total costs associated with past investment decisions reviewed by regulators do not comport to the intent of the Telecommunications Act of 1996.

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Any ultimate Commission decision that would prevent a rural carrier from a compensatory return would violate the carrier's due process under the law and undermine its legitimate, investment-backed expectations. Such interference with carrier property rights in a manner that undermines such expectations constitutes a taking.

For rural carriers, the Restructure Mechanism (RM) revenues are vital to the provision of maintenance of plant facilities and the upgrading of network functionalities in rural areas, as well as the provisioning of universally available basic and advanced services. Simply stated, without a sustainable RM, the Missoula Plan will not work for rural carriers. We respectfully request that the Commission recognize the RM as an access element under Section 201 of the Communications Act.

In a rate-of-return regulatory environment, the overarching principle that the Commission should adhere to is that rate-of-return carriers are entitled, as a matter of law, to a full recovery of their costs in providing interstate services.

The proposed revisions to the existing intercarrier compensation framework recognize three carrier classifications, placing rural carriers in a Track 3 designation that reflects distinctions applicable to carriers subject to rate-of-return.

Rural rate-of-return carriers are entitled to establish cost-based intercarrier compensation rates that recognize the value other carriers receive when they utilize the rural networks to originate and terminate traffic.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America. The purpose of these reply comments is to respond to the over 100 comments filed in response to the Public Notice concerning the Missoula Plan proposal released by the Commission on July 25, 2006 in the above-captioned docket.

We support the Commission's adoption of the Missoula Plan. In summary, the Missoula Plan proposes for rural carriers to:

- Minimize the rate differences between regulatory jurisdictions and between services, which should serve to ameliorate arbitrage;
- Retains revenues lost as intercarrier rates are reduced, in order to ensure that critical revenues are still available to provide basic and advanced services in rural areas that are comparable to those provided in urban areas and to invest in the requisite infrastructure that supports both the incumbent network as well as wireless and IP services that depend on rural infrastructure;
- Provides an approach to achieve equity between the state jurisdictions that have already commenced with intercarrier compensation reform and those that have not;
- Resolves issues that have consumed resources of both carriers and the Commission, including calling scope, intraMTA calling issues, virtual NXX issues, and phantom traffic disputes.

**THE MISSOULA PLAN REPRESENTS A DELICATE BALANCE OF
COMPROMISE BETWEEN DIVERSE SEGMENTS OF THE INDUSTRY**

The Missoula Plan represents a tremendous effort on the part of multiple parties and reflects valuable concepts that merit review by the Commission. While this plan to reform intercarrier compensation is not ideal from any party's perspective, it represents what the Commission had requested to be delivered: an industry solution¹ to a long-standing problem.

We believe that there is significant support for the proposal among rural carriers as evidenced in over forty filings of support by rural interests, including one filing with 588 signatory companies, who recognize that the Missoula Plan proposal is a comprehensive approach that reflects a negotiated compromise geared to deal with today's critical intercarrier compensation issues.

CRITICS OF THE PLAN DO NOT OFFER CONSTRUCTIVE ALTERNATIVES

Critics of the Plan such as Core Communications, Inc. (Core)² confuse the opportunity to serve a customer with the responsibility to serve all customers in a service area. The Plan recognizes appropriate differences in carriers. In order to evaluate the Missoula Plan in context, one must examine exactly what does the Commission seek with respect to intercarrier compensation reform?

¹ As stated by NTCA on page 1 of their comments: "The Missoula Plan is a remarkable proposal forged through numerous negotiating sessions over several years among parties with a long adversarial history. . . . The Missoula Plan represents a significant step towards reforming intercarrier compensation and warrants thoughtful and thorough consideration by the Commission."

² Core, page 1, stating that the Plan is "nothing more than a grab-bag of regulatory [s] subsidies. . ."

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In short, the Commission seeks reform that promotes economic efficiency, preserves universal service, is competitively and technologically neutral, addresses network interconnection issues, and meets any legal authority hurdles.

We believe that appropriate goals also include that the reform plan should minimize arbitrage opportunities and be resistant to gaming, as well as enable the ubiquitous deployment of broadband facilities by the private sector in rural America.

With respect to rural concerns and needs, we support the principles espoused by the Rural Alliance: *Intercarrier compensation rates should be uniform and cost-based; current interconnection points and rules should be maintained; the retail service provider (RSP) should pay for the network usage it creates; transiting services should be available at just and reasonable rates and conditions; revenue replacement funds should be based on net revenue losses; to protect rural customers, there needs to be additional oversight of IP interconnection and infrastructure-based universal service.*

How do the wireless carrier proposals in the comment round compare to these principles? Commenters have presented flawed alternatives such as the CTIA suggestion³ that includes possible TELRIC pricing applications for access as opposed to reciprocal compensation. We submit that the observation of three informed industry observers relative to TELRIC for rural access is applicable to the rural carrier scenario: “a pricing

³ CTIA’s proposal to unify rates at zero for origination and termination amounts to another transparent attempt to achieve the type of bill and keep scenario that Chairman Martin commented on at the July, 2005 summer NARUC meeting: “I am not sure that such a proposal, which also necessitates large increases in end-user charges and/or the creation of a new universal service high cost fund, is politically viable. .”

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model designed to mimic the forward-looking costs of an ideally efficient provider without any of the risk of actually investing in facilities.”⁴

Alfred Kahn’s comments from nearly a decade ago are very appropriate in any current debate on TELRIC pricing. In a letter to then FCC Chairman Reed Hundt dated January 14, 1997, Dr. Kahn asserted that the relevant costs are the costs that will actually be incurred by a carrier that has a fully functional network:

The general economic principle that they cite clearly requires, however, that the correct pricing signals inform consumers of the costs that society will actually incur if they take somewhat more of each good or service. Advocates of the blank slate version of the TELRIC typically assume that this is the level to which competition would drive price, if it were effective. They are mistaken. In a world of continuous technological progress, it would be irrational for firms constantly to update their facilities in order completely to incorporate today’s lowest-cost technology, as though starting from scratch. Investments made today, totally embodying today’s most modern technology, would instantaneously be outdated tomorrow and, in consequence, never earn a return sufficient to justify the investment in the first place.

The provision of telecommunications in the highest cost to serve areas of the country is inherently risky and capital intensive. In evaluating intercarrier compensation cost recovery issues, the Commission should not attempt to ignore its consistent record evidence of the last decade that rural costs are different. In evaluating non-embedded cost alternatives for rural carriers, the Commission should heed its experience from the Rural Task Force evaluation of a hypothetical model. In short, rural rate-of-return carriers have specific cost recovery needs.

With its adoption of the majority of the RTF recommendations, the Commission itself has recognized that the costs of rural carriers are higher than non-rural carriers.

⁴ P. Huber, M. Kellogg, and J. Thorne, *Federal Telecommunications Law* (Aspen 2d ed. Suppl. 2004), page 5.

Some parties to this proceeding will undoubtedly cite the portion of the Verizon TELRIC case where the Court stated that Congress intended to transition from familiar public utility models “in favor of novel ratesetting” and choose to ignore the completion of the Court’s statement that contained the important phrase “short of confiscating the incumbent’s property.”⁵ The Court left open a potential takings challenge against any particular set of rates that did not provide the carrier with a compensable return.⁶

The unrecovered embedded costs of investment in the rural carriers’ network facilities are real costs that will continue to be borne by the rural carriers. If carriers are not permitted to recover these costs, such actions would ultimately be deemed confiscatory and subject to review under the Takings Clause. Commission rules as found at 47 C.F.R. Section 65.1-65.830 require that a rural rate-of-return carrier be permitted the opportunity to earn an authorized rate of return on investment allocated to interstate access services.

Established precedent in this regard may be found in Duquesne Light Co. v. Barasch, 488 U.S. 299, 308-10 (1989); and FPC v. Hope Natural Gas Co., 320 U.S. 591,602 (1944). Any changes to access rates that result in revenues that do not recover total costs associated with past investment decisions reviewed by regulators do not comport to the intent of the Telecommunications Act of 1996.

Any ultimate Commission decision that would prevent a rural carrier from a compensatory return would violate the carrier’s due process under the law and undermine

⁵ Verizon v. FCC, 535 U.S. 467, 489 (2002).

⁶ Id. at 524-525.

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its legitimate, investment-backed expectations. Such interference with carrier property rights in a manner that undermines such expectations constitutes a taking⁷.

FROM A RURAL CARRIER PERSPECTIVE, CERTAIN KEY FUNDAMENTALS ARE PRESENT

What does this mean for a review of the basis of calculating rural carrier intercarrier compensation? The Commission should follow for rural carrier intercarrier compensation the policy differentiation it used in adopting the Rural Task Force rules for universal service. Simply stated, the prescription to keep communications in rural areas viable⁸ is to continue the principles that serve as the foundation of the earlier Rural Task Force rules.

This was the conclusion reached by the Rural Task Force at the start of the decade. Rural is still different in 2007, and will still be different in future years⁹. The rural difference is a valid consideration in developing intercarrier compensation public policy in 2007¹⁰. Any reform to intercarrier compensation for rural carriers must reflect the diversity of cost between rural and non-rural carriers, and among the subset of rural carriers¹¹.

⁷ Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978).

⁸ Rural areas provide benefits to the entire society through the provision of agricultural, energy and recreational resources that are enjoyed by both urban and rural residents.

⁹ In the RTF Report, the concept of the Law of Large Numbers was discussed, explaining the phenomena that with a large number of offices, urban carriers are able to flatten out any discrepancies. In an access/ratemaking arena, the corollary of the 3D rule (Drastically Different Denominators) is applicable. With fewer customers in the ratesetting equation, the mathematics is different for rural carrier ratesetting.

¹⁰ Rural carriers exist because larger carriers chose not to serve the areas that were most costly to serve.

¹¹ It is worth noting that in the Commission's own NRPM in WC Docket No. 03-173 issued in September, 2003 focused on TELRIC methodology, the Commission itself tentatively concluded that TELRIC rules "should more closely account for the real-world attributes of the routing and topography of an incumbent's network", as well as "should not be based on the totally hypothetical cost of a most-efficient provider."

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This was demonstrated empirically in the Rural Task Force's White Paper 2¹², and this research was corroborated in NECA's *Trends in Telecommunications Cost Recovery: The Impact on Rural America* report released in October, 2002.

In a rate-of-return regulatory environment, the overarching principle that the Commission should adhere to is that rate-of-return carriers are entitled, as a matter of law, to a full recovery of their costs in providing interstate services. A proper balance¹³ between the sources of intercarrier compensation, end user rates, and support payments must be maintained.

The Missoula Plan incorporates concepts that are essential for rural carriers. First, the proposed revisions to the existing intercarrier compensation framework recognize three carrier classifications, placing rural carriers in a Track 3 designation that reflects distinctions applicable to carriers subject to rate-of-return. This is consistent with the Commission's long-standing history of differentiating between sizes of carriers in order to provide equitable solutions to regulatory challenges¹⁴.

Second, rural rate-of-return carriers are entitled to establish cost-based intercarrier compensation rates that recognize the value other carriers receive when they utilize the rural networks to originate and terminate traffic.

¹² "The Rural Difference", Rural Task Force White Paper 2, released January 2000.

¹³ Some recent proposals, most notably the block grant proposal previously offered by the NARUC is deficient in several respects. First and foremost, Section 254 mandates that universal service support be "specific, predictable, and sufficient." Implementing a block grant approach to distributing federal universal service funding allows state commissions with such a large degree of discretion so as to render the achievement of the "predictable" tenet impossible. Similarly, the metric of "sufficiency" may well not be achieved. In order for RLECs to continue to deploy rural infrastructure in the highest-cost areas, reliable access to support funding must continue throughout the investment cycle.

¹⁴ Commenting parties that assert that Track 3 rates are still too high are attempting to conveniently ignore this long-standing Commission approach that is grounded in a prudent public policy foundation.

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Originating access remains appropriate given the requirements borne by certain local exchange carriers

Under current Commission rules, rural local exchange carriers (RLECs) are required to provide equal access to interexchange carriers,¹⁵ which enable the IXC to establish a retail relationship with the RLEC's subscriber. In addition, RLECs are required to perform the call originating functions for services for which they are not the retail service provider such as 800 service and 10xxx. With these requirements in place, it is reasonable to continue to reflect originating compensation for such calls. To do otherwise would deprive a carrier the ability to recover an appropriate portion of applicable network costs from intercarrier compensation.

Establishing a zero rate for originating access creates several public policy consequences, as neither the IXC nor the customer has a good reason to limit its use of the local circuit. The deleterative consequences of such an approach include the creation of new forms of arbitrage, as the IXCs (or the portion of the acquiring company that uses those assets) are able to use the network for free. By requiring all users of the network, not just the end-user subscribers to pay for use of the network, resources are allocated efficiently as demand will be driven based on the cost of using the network. This concept is supported by a 2004 NASUCA statement¹⁶ that any plan for intercarrier compensation reform must recognize that a carrier that "originates, transits or terminates traffic on the network of another carrier imposes costs on that carrier. As a result, the cost of intercarrier compensation cannot be zero."

¹⁵ Notwithstanding the spate of industry mergers, the equal access requirement remains for rural carriers.

¹⁶ National Association of State Utility Consumer Advocates (NASUCA) Intercarrier Compensation Proposal, CC Docket No. 01-92, filed December 14, 2004, page 1.

With respect to changes in intercarrier compensation rates, rural carriers must receive recovery of the otherwise displaced interconnection revenue from a sustainable access element that should be available only to carriers that experience such plan-imposed rate reductions.

To the extent that changes in the existing rules are undertaken, these rule changes must reflect the operational and legal realities that limit the obligations of rural carriers to undertake financial responsibility for the transport of traffic beyond their networks.

“RURAL IS DIFFERENT” ISSUES ARE ADDRESSED IN THE TRACK 3 PROVISIONS

The provision of telecommunications in the highest cost areas of the country is inherently risky and capital intensive. In evaluating intercarrier compensation cost recovery issues, the Commission should not attempt to ignore its consistent record evidence of the last decade that rural costs are different. In evaluating non-embedded cost alternatives for rural carriers, the Commission should heed its experience from the Rural Task Force evaluation of a hypothetical model. In short, rural rate-of-return carriers have specific cost recovery needs. In 2007, rural is still different. What does this mean for a review of the basis of calculating rural carrier intercarrier compensation? The Commission should follow for rural carrier intercarrier compensation the policy differentiation it used in adopting the Rural Task Force rules for universal service. Simply stated, the prescription to keep communications in rural areas viable is to continue the principles that serve as the foundation of the earlier Rural Task Force rules.

The existing system of cost recovery consisting of three equally important components of access charges, universal service support, and local rates is the only approach available to the Commission that will enable it to avoid valid claims of confiscation. Further, it is necessary to take actions that permit rural carriers to recover any shortfall from access rate unification in order for rural carriers to meet their universal service obligations.

The ability to participate in interstate, and in some cases intrastate pooling arrangements, provides rural carriers with administrative efficiencies and risk management benefits that are not achievable by an individual carrier. There are four notable benefits of pooling for rural carriers. Pooling reduces risk factors by stabilizing cash flows and helps to offset the effect of unexpected demand reductions or unanticipated cost increases. Second, the ability to average access rates in rural areas serves to mitigate high access rates that could deter IXCs from serving isolated, high-cost areas. Third, pooling assists rural carriers with access to reasonably priced capital that is necessary to build and maintain rural infrastructure via adequate recovery of cost. Fourth, pooling reduces the administrative burdens for both the Commission and the rural carriers¹⁷, as the filing of over 1,000 individual tariffs would create administrative complexity. The tangible public policy benefits of uniform rates, terms and conditions remain as valid today as they have been for the last two decades.

¹⁷ CC Docket No. 78-72, FCC 82-579, Final Rules at paragraph 362: "We recognize that we cannot and should not expect a telephone company with eight employees to do everything that Pacific Telephone is expected to do." While Pacific is now again a part of AT&T, the observation remains relevant today.

Track 3 SLCs are appropriately lower than for Track 1 and 2

Additional SLCs should be minimized with an appropriate balance between reduced access and increased universal service support. The Commission has previously recognized in the MAG Order that recovery of network-related costs should be comprised of a combination of local service revenues, access revenues, and universal service support. Increases to SLCs must be managed so as to not violate the comparability criteria (Section 254 (b)(3))¹⁸ that currently is in place in the rules.

Interconnection and transport issues

Unlike the relatively recent issues of access charges and universal service, the network interconnection issues have a history that dates to Mr. Bell's grand invention of 1876. For example, the issues regarding telegraph interconnection posed regulatory challenges early in the 1900's. The difference between issues then and now is driven by the panoply of services that are available over modern transmission facilities and the sheer magnitude of the dollars involved in these types of regulatory decisions.

In this instant proceeding, contrary to the specious assertions offered by opponents of the Missoula Plan Rural Transport Rule (RTR), the Commission's own rules provide useful insight to this debate. At Section 51.305, the rules provide the ILECs offer interconnection "at any technically feasible point within the incumbent LEC's network." This proposed RTR appropriately provides that Track 3 carriers do not have the financial

¹⁸ Consumers in all regions of the Nation . . . including rural areas . . . should have access to telecommunications . . . at rates that are reasonably comparable to rates charged for similar services in urban areas.

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obligation to deliver their originating traffic to destinations beyond their established network interconnection points¹⁹.

Tandem transiting

We believe that the Section 251(a) obligation to interconnect directly or indirectly encompasses an obligation to provide transit services. All small carriers need tandems for interconnection. In many areas, there are no alternative choices for tandem providers, resulting in a potential abuse of market power by the tandem provider. As industry consolidation continues, the regulation of tandem services will become more important.

We recommend that the Commission develop rules and regulations related to the provision of transit services under reasonable rates, terms, and conditions. Without the Commission establishing a reasonable set of parameters, rural carriers will be required to pay whatever price a transit provider chooses to extort, or perhaps not even be able to obtain the service.

THE SUSTAINABILITY OF THE RESTRUCTURE MECHANISM IS VITAL TO RURAL INFRASTRUCTURE

A major component of this compromise is that the plan hinges on the creation of a non-portable Restructure Mechanism (RM) that is designed to retain access revenues that

¹⁹ We concur with the point raised by the Missouri Small Telephone Companies (page 12) that when competitors elect to locate switching investment well outside the local calling area and utilize indirect connections, rural carriers do not inherit the responsibility for transport to these distant points. We strongly disagree with Alltel's assertions beginning at page 11 of their filing that would impose build out obligations on rural carriers that would facilitate competitor entry. This is the antithesis of competitive neutrality, a foundational element for this Commission and the cloak behind which Alltel often hides.

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are proposed to be displaced when intrastate intercarrier compensation rate levels are reduced to interstate levels²⁰. For rural carriers, these revenues are vital to the provision of maintenance of plant facilities and the upgrading of network functionalities in rural areas, as well as the provisioning of universally available basic and advanced services.

Rural infrastructure also supports wireless networks and VoIP services, as detailed in a recent study sponsored by the Foundation for Rural Service. Current wireless, VoIP, and satellite networks require a connection to land line infrastructure to provide full functionality. This network reality is documented in the white paper *Wireless Needs Wires: The Vital Role of Rural Networks in Completing the Call*, published by the Foundation for Rural Service in March, 2006. This paper states in part:

Without thoughtful consideration by policymakers of the challenges of providing wireless services in rural America, as well as the dependence of wireless services on wireline networks, portions of the nation are likely to remain underserved . . . Most importantly, one must recognize that without the underlying wireline network, wireless networks could not exist in their current form. In spite of this obvious fact, large wireless carriers and policymakers alike continue to pursue practices and policies that will in fact undermine the critical wireline network. While discussions on how to modify reciprocal compensation, access charges, and universal service continue, attention must be placed on ensuring these mechanisms are capable of maintaining the fiscal health of that wireline network.

²⁰ Track 3 carriers are making the largest rate reductions of all carriers under the Missoula Plan proposal. Commenters such as Time Warner Cable (pages 2-3) appear to have ignored this fact when they incorrectly asserted that there is no basis for rate-of-return carriers to maintain their existing revenue streams and thereby earn a compensatory rate-of-return. Other commenters such as Alltel seem to be continuing the legacy of their acquired company Western Wireless by attempting to shift the debate in this proceeding to one of whether rate-of-return regulation should continue. The Commission should reject such an approach by Alltel to address issues not properly noticed.

Simply stated, without a sustainable RM, the Missoula Plan will not work for rural carriers²¹. Without the reasonable prospect of an opportunity to recover infrastructure costs, investment will not continue to be deployed²² in many sparsely populated and high-cost to serve areas. We respectfully request that the Commission recognize the RM as an access element under Section 201 of the Communications Act, concurring with commenters such as the Wyoming Rural Independents (page 10) and OPASTCO (page 7).

PHANTOM TRAFFIC ISSUES SHOULD BE RESOLVED SOONER, NOT LATER

Rural carriers must be compensated for all calls that terminate on their networks. A process should be developed to identify “phantom traffic” in order to ensure that carriers are paying appropriate charges under current rules and regulations. We submit that any attempts by carriers to strip off or alter billing information is by definition illegal and should be addressed by the Commission initiating action via ordering all carriers to comply with existing network billing obligations established by the recognized industry billing forums. We respectfully suggest that the Commission currently possesses the authority to levy penalties on carriers that continue to engage in any unlawful and illegal billing practices.

²¹ Rural carriers realize revenue from end users, intercarrier compensation for use of their network facilities, and the universal service funding mechanisms. Balanced cost recovery among these three revenue streams is prerequisite to the Communications Act mandate that end-user rates remain reasonable and comparable for rural customers to their urban counterparts.

²² Opponents of the RM also appear to conveniently ignore the carrier of last resort responsibilities that reside with incumbent local exchange carriers that stand ready to serve in areas where competitors are not required to deploy infrastructure or provide reliable communications services.

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It is still the LEC that would be providing the access to customers of another company (in some cases a combined RBOC/IXC megacompany) just the same as under the current rules. Our research indicates that in no other business would retailers be allowed to service customers while using the property of another company without compensating the company providing the resources.

ISSUES CONCERNING MISSOULA PLAN PROPOSED MODIFICATIONS

It is our understanding that the Missoula plan supporters intend to file several modifications to the originally filed plan with their reply comments. This is consistent with the representations made at the time the Missoula plan was filed, as it was indicated that the Missoula plan was still a work in progress.

We believe that a timely submission of these proposed modifications is important to the debate of this proposal.

We also understand that discussions are ongoing with regard to some modifications of the track definitions and several changes desired by rural CLECs. We believe that some carefully crafted modifications to track definitions may well improve the proposal. GVNW recognizes that there are differences between the circumstances between urban and rural CLECs and that a “one-size-fits-all” treatment of CLECs as Track 1 carriers in all circumstances may not be appropriate. GVNW respectfully requests that the Commission review carefully the proposals that may be made to treat rural CLECs as Track 3 carriers rather than Track 1 carriers. We further encourage the rural CLEC discussions to continue to resolution so as to avoid any unintended consequences that could unfairly penalize rural CLECs.

If the Commission were to elect to adopt the Missoula Plan proposal, we encourage some careful review of the amount of time after the Commission finalizes intercarrier compensation reform rules and the point in time that states would have the option to implement these changes. We believe that a six month period for states to prepare to enact this magnitude of change is warranted.

CAPACITY BASED ISSUES POSE A FUTURE CHALLENGE FOR THE COMMISSION AND INDUSTRY

Any new intercarrier compensation regime should not only recognize existing paradigms, but should also anticipate changes over at least the near term, if not the long term. Thus, the Commission must focus in part on the transition from a circuit-switched platform to a packet-switched world. The issues that require attention range from public safety issues to issues related to compensation and confiscation.

The Commission rejected the argument that VoIP traffic should be exempt from access charges on the basis of the level of the charge (AT&T Order, paragraph 18). As long as voice-over-broadband providers terminate their calls over the public switched network, they are using the network in the same manner as an interexchange carrier (or division of a vertically-integrated RBOC) and create the same types of costs that must be borne by the provider of the PSTN and should continue to be recovered through intercarrier compensation.

We are pleased to see the Commission's recent attention to the 911 issues related to VoIP service offerings. Unlike the prior debates in the universal service realm

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concerning the provision of equal access by CETCs, which is a debate predicated on competitive neutrality concepts, the availability of 911 service in situations where the alternative service is advertised as the “new telephone company” hits straight at the heart of this nation’s public safety policies. In prior decisions, the Commission has stated that 911 service is a key element²³ of public safety policy.

As the Commission addresses future issues, we submit that the Commission must uphold the basic tenet that carriers are entitled to compensation for the use of their facilities.

Regardless of how the Commission ultimately chooses to categorize Vonage-like services, the current law provides the Commission the authority to extend universal service obligations to voice-over-broadband providers, pursuant to Section 254(d). Section 254(d) allows the Commission to require contribution from “other providers” if the public interest so requires. At this juncture in the techcom revolution, the public interest requires these contributions be assessed.

²³ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking (2003) , 18 FCC Rec. 25340, paragraph 1, stating in part that: “911 service is critical to our Nation’s ability to respond to a host of crises.”

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Respectfully submitted

Via ECFS on 2/1/07

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