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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Developing a Unified Intercarrier
Compensation Regime.

CC Docket No. 01-92

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION
ON THE MISSOULA PLAN
FOR INTERCARRIER COMPENSATION REFORM**

Its Attorneys: James W. Olson
Indra Sehdev Chalk

607 14th Street, NW, Suite 400
Washington, D.C. 20005-2164
(202) 326-7300

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REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (“USTelecom”)¹ respectfully submits these Reply Comments in support of the Missoula Plan for Intercarrier Compensation Reform (the “Plan” or the “Missoula Plan”)² filed in the Commission’s ongoing Intercarrier Compensation Proceeding, and in response to the Wireline Competition Bureau’s Public Notice seeking comment on the Plan.³ As we explain below, the Plan is the only practicable and comprehensive solution to the intercarrier compensation morass, and the Commission should act promptly to approve it.

¹ USTelecom is the nation’s leading trade association representing communications service providers and suppliers for the telecommunications industry. USTelecom’s carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

² Letter from Commissioners Tony Clark, Ray Baum, and Larry Landis, NARUC Task Force on Intercarrier Compensation, to Chairman Kevin Martin, Federal Communications Commission, CC Docket No. 01-92 (filed July 24, 2006) (attaching the “Missoula Plan”).

³ “Comment Sought on Missoula Intercarrier Compensation Reform Plan,” Public Notice, DA 06-1510 (rel. July 25, 2006).

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INTRODUCTION AND SUMMARY

The Missoula Plan is the Commission's best option for fixing the host of interrelated problems that characterize today's maze of intercarrier compensation systems. Those problems range from the dizzying array of different, unpredictable intercarrier compensation rates that apply to different calls between different carriers in different ways; to a resulting proliferation of fraud and arbitrage opportunities; to unclear interconnection rules that have led to over a decade of intercarrier disputes; and to an eroding access charge and support system. In their opening comments, the various industry factions cannot agree on how all these problems can be fixed, and they predictably reveal that one party's "problem" is another's advantage. As a whole, however, the comments overwhelmingly demonstrate that the need for a fix of some sort is critical and overdue. And despite many commenters' critiques of one or another aspect of the Missoula Plan, not one has offered an alternative with the detail or breadth to merit serious consideration. To move this industry forward, and to progress into the broadband era smoothly and sensibly, it is time for concrete solutions and real progress.

While the members of USTelecom do not uniformly agree on each individual facet of the Missoula Plan,⁴ the Plan is the only proposal on the table that offers the necessary path forward. It is substantial and robust, and it was forged in year-long negotiations among representatives of all sides of the industry, with consensus solutions to the full panoply of intractable problems that complicate intercarrier compensation relationships today. Adoption of the Plan would greatly simplify intercarrier compensation by creating more uniformity in origination and termination rates; it would lower rates overall; it would rationalize interconnection rules; and it would

⁴ Indeed, some USTelecom members oppose the Plan.

resolve tricky problems regarding transit and “phantom” traffic. Moreover, the Plan would ensure that incumbent LECs that have borne the bulk of this country’s universal service burden for decades could move seamlessly forward into the new era of communications. And most important, by effecting these major changes, the Plan will provide substantial, long-lasting benefits for consumers: prices will drop as providers respond to increased competition by passing through intercarrier compensation savings. Providers will be free to focus on innovation and competition rather than litigation and regulatory loopholes. And most significantly, over the long run, carriers will be able to turn their savings and their attention toward the development of an advanced broadband system nationwide, on which the next generation of services can be offered.

I. THE MISSOULA PLAN IS A NECESSARY AND OVERDUE PATH FORWARD TO FIX THE LONG-BROKEN INTERCARRIER COMPENSATION SYSTEM.

In the first *Inter-carrier Compensation NPRM*,⁵ the Commission sought the industry’s help in solving the “several pressing” and “difficult issues that characterize current intercarrier compensation regimes.”⁶ As the Commission made clear, these included a host of arbitrage opportunities, as well as inefficiencies that “likely distort the structure and level of end-user charges.”⁷ The problems in need of a solution, according to the *NPRM*, ranged from intercarrier compensation rates and structures, to transit issues, universal service, and interconnection, and required significant and creative reform.

⁵ Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001).

⁶ *Id.* at 9616, 9624 ¶¶ 11, 35.

⁷ *Id.* at 9616-9618 ¶¶ 11-18.

The industry agreed. As the Commission observed, the substantial record developed in response to the first NPRM overwhelmingly “confirm[ed] the need to replace the existing patchwork of intercarrier compensation rules with a unified approach.”⁸ In the 2005 *FNPRM*, the Commission observed that the “record in [the intercarrier compensation] proceeding makes clear that a regulatory scheme based on these distinctions is increasingly unworkable in the current environment and creates distortions in the marketplace at the expense of healthy competition [Industry] developments and others discussed herein confirm the urgent need to reform the current intercarrier compensation rules.”⁹

The Missoula Plan was crafted and filed to solve this panoply of intercarrier compensation issues. As the majority of comments filed in response to the Plan indicate, the need to act quickly and adopt solutions to the morass of intercarrier compensation problems has become only more urgent over time. Commenters from the wireline, wireless, and even the cable industry agreed that problems with respect to diverse and confusing termination rates, phantom traffic issues, interconnection, and transit, have reached a level that, in NCTA’s words,

⁸ Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685, 4787 ¶ 3 (2005).

⁹ *Id.* The Commission’s conclusions were mirrored in the statements of the individual commissioners. As Commissioner Copps succinctly put it: “Our intercarrier compensation system is Byzantine and broken.” Comm’r Copps’ Statement at 1, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-33A4.pdf. See also Comm’r Abernathy’s Statement at 1 (“There is no shortage of metaphors to describe [the intercarrier compensation] rules that have been developed by the FCC and state commissions over the previous decades—quicksand and quagmire leap to mind—and all of them recognize the troubled state of affairs for the industry and consumers.”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-33A3.pdf; Comm’r Adelstein’s Statement at 1 (“[T]here is a widespread call for further reform of the intercarrier compensation regime, particularly with developing intermodal competition and the advent of Internet-Protocol-based services like VoIP.”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-33A5.pdf.

“pose a barrier to competition.”¹⁰ Carriers noted that “[f]urther delay [of reform] will only perpetuate the continued inefficiencies” of today’s system,¹¹ and that a “transition from the current complicated and unsustainable intercarrier compensation regime” is “long-overdue.”¹²

Nevertheless, a handful of commenters in this proceeding have opposed the Plan on the remarkable ground that reform of today’s system is unnecessary. NASUCA, for example, insists that “the absolute size of the problem” has “diminished over time, and will continue to diminish even if nothing is done.”¹³ But that statement is simply at odds with the overwhelming evidence to the contrary. Indeed, the problem has grown even worse in the interim between the 2001 *NPRM* and the latest *FNPRM* — and even in the year since. Debates about intercarrier compensation for VoIP and wireless have littered the Commission’s dockets,¹⁴ and other intercarrier compensation disputes clog the court system and consume carrier resources.¹⁵ And contrary to NASUCA’s position, state regulators and consumer groups have insisted that swift reform is critical to protect consumers, now *and* in the future: State regulators note that the current morass has become “market-affecting”¹⁶ and that “delay” in adopting reform “does not

¹⁰ See NCTA Comments at ii, 28 (unless otherwise noted, commented cited were filed in CC Docket No. 01-92 on or around Oct. 25, 2006 and relate to the Missoula Plan). See also T-Mobile Comments at 1, Broadview Comments at 5; Cavalier Comments at 31.

¹¹ Cavalier Comments at 47.

¹² U.S. Cellular Comments at 2.

¹³ NASUCA Comments at 13.

¹⁴ See Level 3 Communications LLC’s Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b) (filed Dec. 23, 2003), WC Docket No. 03-266; Declaratory Ruling and Report and Order, *Developing a Unified Intercarrier Compensation Regime; T-Mobile Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Rcd 4855, 4864-65 ¶ 16 (2005).

¹⁵ See, e.g., *Verizon v. Global Naps*, No. 1:03CV05073ENV-RML, 2006 WL 3486697 (E.D.N.Y. Dec. 1, 2006).

¹⁶ Texas PUC Comments at 1, 8.

serve consumers.”¹⁷ For example, the Texas Office of Public Utility Counsel recently argued that today’s “Byzantine” system “unfairly burdens” consumers by failing to account for technological change, creating confusion, and creating opportunities for arbitrage that interfere with the real, service-based competition.¹⁸

II. THE MISSOULA PLAN IS THE ONLY VIABLE, COMPREHENSIVE SOLUTION THAT WILL ADDRESS ALL ASPECTS OF THE COMPLEX PROBLEMS UNDERLYING INTERCARRIER COMPENSATION.

A. The Missoula Plan Alone Addresses the Full Array of Interrelated Intercarrier Compensation Issues.

Not one critic of the Missoula Plan offers, or has offered in the past, an equally comprehensive, industry-wide plan. To be sure, some providers and associations have submitted their own “plans,” but these are little more than general outlines or lists of abstract principles for reform.¹⁹ Like the five-page NASUCA “plan,” these proposals are uniformly short on detail and long on broad generalizations.

Even the CTIA “METE” plan,²⁰ which is the most comprehensive of the alternative proposals, lacks any real detail concerning implementation. For example, CTIA advocates a bill-and-keep system, but fails to describe *how* the industry could possibly accomplish this complete transformation in the three-year period its plan assumes. The plan provides no information concerning the details of the transition — details that would presumably be of enormous

¹⁷ California PUC Comments at 2.

¹⁸ Texas Office of Public Utility Counsel, et. al. Comments at 2, filed in CC Docket No. 01-92, May 23, 2005.

¹⁹ See, e.g., NASUCA Comments at 76-81 (outlining five-page “NASCUA Plan”); NCTA Comments at 22-33 (suggesting “positive steps” for intercarrier compensation reform); Time Warner Telecom, et. al. Comments at 20-21 (offering detail-free “targeted steps to address glaring problems with the current regime”); T-Mobile Comments at 2-3 (“T-Mobile’s Principles of Reform”).

significance to all the affected. And CTIA's cursory discussion of interconnection issues addresses only general rules that should apply in the absence of interconnection agreements — an issue of particular concern to its members — but provides no solution with respect to the core interconnection disputes that beset the industry today.

The Missoula Plan, in contrast, is detailed and comprehensive. In place of generalized wish lists, its authors took on the tremendous burden of negotiating and drafting terms that address all of these interrelated problems comprehensively: from rates, to rate structures, to interconnection, to phantom traffic, to universal service support. Specifically, the Plan:

- *Sets definitive and easy to follow compensation rules for every class of traffic, whether wireless, VoIP, VFX traffic, or any other type. These rules, which would apply immediately, would promptly eliminate debates before the FCC, state commissions, and the courts; moreover, they could be easily implemented on a going-forward basis.*
- *Sets a definitive transition schedule to move the industry away from relying solely on high intercarrier compensation rates by setting clear rules and a definitive schedule. The Plan reduces the highest intercarrier compensation rates for all carriers, and moves toward increased reliance on end-user charges by permitting carriers to charge higher SLCs. The Plan sets forth a specific, step-by-step schedule to accomplish this transition, addressing the phase-down of various origination and termination rates, and the gradual increase of SLC caps.*
- *Unifies most terminating and originating intercarrier rates, while respecting the unique needs of specific carriers. To achieve this, the Plan divides all carriers into various Tracks and sets forth the rules for each Track, including the phase-down and unification of rates and the ultimate rate schedules.²¹ This should vastly simplify today's patchwork of different rates and rate structures. At the same time, the Plan is careful to account for the special needs of rural consumers, by permitting more flexibility and providing for a more gradual phase-down of rates.*
- *Addresses interconnection, defining carriers' financial obligations pursuant to a clear set of rules. The Plan eliminates a core problem in today's intercarrier compensation regime by rationalizing the financial burdens associated with physical*

²⁰ See CTIA Comments, filed in CC Docket No. 01-92 on May 23, 2005.

²¹ USTelecom does not take a position on the particular track definitions or track assignments for individual companies.

interconnection of carriers' networks. By setting forth simple rules, the Plan should eliminate a huge source of litigation and arbitrage. The Plan sets default "Edges" for delivery of traffic, and generally requires a carrier to assume financial responsibility for transport of its traffic to another carrier's Edge. At the same time, the Plan is careful not to require disruption of existing physical interconnection arrangements, and to respect the unique needs and high costs that rural carriers and customers face.

- *Creates a path forward to ensure that all carriers can arrange interconnection and compensation agreements.* The Missoula Plan proposes that the existing interconnection agreement regime be extended and amended so that all carriers can reach agreements; it sets forth default rules that apply in the absence of an agreement and a means for carriers to achieve an agreement.
- *Addresses transit and phantom traffic,* two essential components of intercarrier compensation. The Plan addresses both the obligation and the rates for transit traffic, clearing up an issue that has been increasingly disputed and that is critical to smooth operation of a universally interconnected communications network. At the same time, the Plan addresses the issue of phantom traffic, so that both transit and terminating carriers will have confidence that they can accept traffic and correctly bill for it without risk of fraud or significant losses.²²

As noted above, not all of USTelecom's members support all aspects of the Plan,²³ but the time has long passed for rejecting a comprehensive solution simply because, in the view of some industry faction or another, it falls short of perfection. The Missoula Plan is the sole solution on the table capable of rendering real, long-term, and comprehensive reform in the industry, and the time has come — in fact, came long ago — for enactment of such reform.

The Commission should reject, in particular, the arguments by some commenters who propose rejection of the Plan because some portion of it would eliminate an arbitrage opportunity that serves their particular interest or economic advantage. For example, even while recognizing that overall reform is necessary, Broadview insists that the Commission should not touch

²² USTelecom has separately filed comments endorsing the Missoula Plan's proposals for addressing phantom traffic. Comments of the United State Telecom Association, CC Docket No. 01-92, filed Dec. 7, 2006.

²³ As noted, some USTelecom members oppose the Plan.

interstate access charges, since it believes it, as a CLEC, has nothing to gain from that reform.²⁴ Likewise, Cavalier protests the Plan's change in interconnection rules because it has benefited from rules that have shifted the burden to ILECs.²⁵ Before there can be meaningful reform in the public interest, however, *all* parties must be prepared to give up the loopholes that have served their individual interests. Short-sighted preservation of special interests will have long-term consequences that disserve not only the public but the providers seeking to protect the special advantages they enjoy today, including erosion of consumer confidence and sustainable support for the core network and investment in next-generation facilities.

There is also no merit to arguments that the Plan is too complex.²⁶ Again, the Missoula Plan is the only plan that addresses the full range of issues and that provides the details and transition path needed to achieve workable reform. Any such plan will *inevitably* be complex and highly detailed, but that is what is so badly needed here: concrete steps rather than vague aspirations.

The Commission should likewise reject the argument that the Plan's rate unification rules will accomplish nothing because they do not eliminate any carrier-by-carrier variation in rate levels.²⁷ As an initial matter, the Missoula Plan is not the last word in intercarrier compensation reform: it is the first step. Indeed, the Plan itself recognizes that the Commission may consider additional unification and reductions in year four of the Plan.²⁸ Just as important, even the

²⁴ See Broadview Comments at 75.

²⁵ See Cavalier Comments at 38.

²⁶ See Missouri PSC Comments at 3, CTIA Comments at v, Cavalier Comments at 41.

²⁷ See, e.g., Alltel Comments at 7; Comptel Comments at 3; CTIA Comments at 15; Qwest Comments at 12; Texas PUC Comments at 9.

²⁸ Missoula Plan at 1-2.

unification steps currently anticipated by the Missoula Plan will mark a vast improvement over the existing system. Under the Plan, there will be far fewer rates than there are today, and terminating rates for the overwhelming majority of access lines will be unified, thereby closing off most of today's opportunities for fraud and arbitrage. In all of these respects, the Plan is a step forward in simplifying intercarrier relations, and today's rules. As we show below, this will facilitate competition, investment, and consumer welfare.

B. The Missoula Plan Will Promote Competitive Neutrality for All Carriers.

Some industry factions complain that the Missoula Plan is designed as a windfall for ILECs rather than as a true solution for the industry as a whole.²⁹ That complaint is both procedurally and substantively without merit. As a procedural matter, the Plan was drafted with input from across the industry, and those who claim that the negotiations lacked an adequate cross-section³⁰ have only themselves to blame: the Missoula Supporters consistently sought input and participation from across the industry. Moreover, the Plan's terms themselves dispel any claims of ILEC-centrism. The Plan addresses all types of traffic carried by all types of carriers, and it will produce far more equivalence among all those types of traffic and carriers than exists today. It will ensure, for example, that in most cases, CLECs and CMRS carriers have the right to the same level of compensation as the ILEC in the same service area, which certainly is not the case today.

²⁹ See, e.g., Cavalier Comments at 4; Comptel Comments at 8; NASUCA Comments at 36; NCTA Comments at 7.

³⁰ See, e.g., State of Illinois Comments at 1 (describing the Plan as “a compromise between AT&T (and its affiliated companies) and rural carriers”); NASUCA Comments at 2 n.7 (“The supporters of the Missoula Plan are principally at&t in its various manifestations—at&t, BellSouth & Cingular—and the Rural Alliance, an indefinite coalition of small rural telephone companies.”)

Nevertheless, some critics claim that the Plan was intended to actually increase ILEC revenues, because, for example, it raises the SLC cap for ILECs.³¹ But removing a cap on the SLC in order to cushion the blow that ILECs — and in particular rural ILECs — must accept to move from reliance on access charges to reliance on end-user charges is hardly a special new revenue opportunity for ILECs. Further, the removal of rules that preclude ILECs from charging end users more rational amounts is certainly a move toward, not away from, competitive neutrality.³² Indeed, the comments of some commenters who criticize the Plan for permitting ILECs to have SLC pricing flexibility are ironic, given that today, all other carriers enjoy far more flexibility in all their end-user pricing than ILECs typically do.³³

Opponents also complain that the Plan entitles ILECs to collect too much for transit services.³⁴ There is no question today, however, that providers should have the right to charge for that service, and the Commission has never suggested that transit rates should be set at any regulated level.³⁵ And it is worth noting that other commenters argue that the Plan's transit rates

³¹ See State of Illinois comments at 2-3 (characterizing SLC increase as an effort to increase ILEC revenues); NCTA at 31-32 (arguing that SLC increases should be permitted only on a showing that “such relief is warranted.”).

³² All carriers impose flat-rated end user charges; the only question is whether, by raising the SLC cap, the Commission will relax rate restrictions that now burden only ILECs. Of course, as explained below, in most cases, competitive forces will deter ILECs from raising their rates to the level of the increased SLC caps.

³³ See *e.g.*, Comments of Time Warner Telecom at 14-15.

³⁴ See *e.g.*, CTIA Comments at 28 (referencing new “transit revenue increases for ILECs under the Plan”); NCTA Comments at 12.

³⁵ See Memorandum Opinion and Order, *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, 27101 ¶ 117 (2002) (“Virginia Arbitration”) (stating that “the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under [47 U.S.C. § 251(c)(2)]”); see also *id.* (noting the absence of “clear Commission precedent or rules declaring such a duty”).

are too low.³⁶ The Plan simply settles an area of dispute regarding transit charges by bringing certainty to the area; it does not establish a new source of revenues. And by capping the rates, and eventually bringing transit associated with jointly provided access under the tandem transit rules, the Plan's transit rules should benefit all carriers. Finally, the Plan offers carriers other options — including the choice of a competitive transit provider, such as Neutral Tandem, or direct interconnection — to facilitate carriers' ability to choose the most efficient methods to manage their transit traffic costs.

Commenters also object to the Restructure Mechanism, arguing that the absence of full portability is a windfall for ILECs.³⁷ But the Restructure Mechanism is a necessary means of allowing ILECs, and particularly ILECs serving rural areas, to preserve compensation for the services that they are obligated to provide as carriers of last resort. No one seriously contends that consumers in rural areas should be asked suddenly to bear the full freight of the costs of such service. The only means of reforming intercarrier compensation while preserving universal service is thus to provide an additional, explicit source of compensation. Nor is the Restructure Mechanism a revenue guarantee designed to ensure that ILECs incur no losses as they transition away from intercarrier charges. Under the Plan, Restructure Mechanism dollars are distributed *as if* the carrier has met the SLC cap, regardless of what the carrier actually chooses to do.³⁸ Yet as noted above and discussed further below, competitive pressures may keep many ILECs from raising their SLCs to the maximum levels permitted by the Plan, which would potentially reduce their revenues as access charges drop.

³⁶ See Qwest Comments at 30-31.

³⁷ See, e.g., Alltel Comments at 19; Comptel Comments at 6; CTIA Comments at 35; NCTA Comments at 18; Time Warner Telecom Comments at 12; US Cellular Comments at 14.

³⁸ See Missoula Plan at 64.

Contrary to the suggestion of some opponents, the Missoula Plan does not take a position on whether the Restructure Mechanism should be reserved exclusively for ILECs, and the Supporters have even recognized that there are circumstances where it would make sense to provide other carriers with access to the fund.³⁹ But the Plan also recognizes that the Mechanism is designed to replace access charge revenues that have been in place for decades for the specific purpose of ensuring that ILECs could cover their costs of deploying facilities to provide service to each and every requesting consumer across the nation — in many cases, at rates far below cost. For better or worse, incumbent LEC networks were built out and sustained for years in reliance on the existing regime, which sets them apart from newer providers that either never participated in the access charge system or that primarily relied on other revenues (including ISP-bound reciprocal compensation). That distinction, to the extent it plays a role in access to Restructure Mechanism funds, is more than reasonable.

Finally, commenters that claim that the Plan's interconnection rules are designed to favor ILECs are equally wrong.⁴⁰ To the contrary: the Missoula Plan simply harmonizes physical interconnection with intercarrier compensation. The Plan does not require providers to restructure their networks in order to build to every single Edge in an ILEC's network, or preclude carriers from taking advantage of existing interconnection arrangements. It simply provides clear rules establishing financial responsibility that require each carrier to bear the

³⁹ Missoula Plan at 74; *see also* Missoula Supporters' Comments at Attachment 3, p. 3.

⁴⁰ *See e.g.*, Time Warner Telecom Comments at 17-18 (“[T]he Missoula Plan’s edge network proposal in combination with the modifications to the transport rules would result in arbitrary and unjustifiable wealth transfers from CLECs to ILECs.”); Cavalier Comments at 21 (“[T]he Plan would increase competitors’ costs by requiring them to establish more facilities to more locations, at a greater cost per unit of transport, with no net benefit—except to ILECs.”)

transport obligations to deliver its traffic to the terminating carrier's Edge.⁴¹ If an originating carrier wishes to drop all its traffic off at one Edge because it has not built out additional transport facilities to other Edges today, it may do so. The Plan provides that a carrier may provide transport itself, may use the terminating carrier's transport, or use a third party's transport (*i.e.*, tandem transit), and it simply specifies the rules and rates that will apply.⁴² The Plan also contains specific rules to account for points of interconnection established prior to the Missoula Plan's implementation at ILEC end offices or virtual tandems — rules specifically designed to protect the investment decisions of non-ILECs.⁴³ True, the Plan does provide for the special circumstances of rural ILECs by imposing some additional transport burdens on carriers interconnecting with the smallest group of rural carriers. But that is a permissible “compromise designed to balance the objective of unifying rates to the extent possible today against the goal of limiting the size of the Restructure Mechanism.”⁴⁴

In short, the Plan is not a set of windfalls for ILECs. It is a balanced attempt to right today's flawed system, and that process must take into account the special carrier-of-last-resort role played by ILECs, the special circumstances and universal service needs of rural consumers, and the massive disruption that could be caused if access charges were eliminated precipitously without corresponding opportunities to replace those revenues. Overall, however, the Plan

⁴¹ See, *e.g.*, Missoula Plan Executive Summary at 11; Missoula Plan at 32, 41-46.

⁴² See, *e.g.*, Missoula Plan at 9.

⁴³ See Missoula Plan at 32.

⁴⁴ See Missoula Plan at 8. Moreover, the carriers that complain that carriers interconnecting with rural carriers may end up paying more than they do today, *see, e.g.*, US Cellular Comments at 11, again miss the bigger picture. It certainly is possible that an individual carrier's costs to exchange traffic with a particular provider for a particular type of traffic might increase under the Plan. But *overall*, the majority of intercarrier rates will decrease under the Plan, and that — not the economics of a particular competitor — should be the priority.

moves the entire industry in the right direction by reducing the cost of generating telephone calls, eliminating many rate disparities, and leaving room for further change and unification beginning in year four.

III. MOST IMPORTANT, THE MISSOULA PLAN WILL SUBSTANTIALLY ADVANCE CONSUMER WELFARE.

A. The Missoula Plan Will Reduce Carrier Disputes, Increase Competition, and Facilitate Investment in Next Generation Facilities and Services

Today's arbitrary regulatory distinctions inefficiently focus the industry's attention on arbitrage opportunities and lead to litigation and incessant carrier disputes that are an entirely unproductive use of provider resources. The ISP-bound traffic dispute, for example, led to a hothouse industry of uni-directional providers seeking a flow of unforeseen income made possible under the reciprocal compensation regime.⁴⁵ The development of that mini-industry provided *no* apparent benefits to consumers while engendering massive and protracted disputes. The development of VoIP has similarly produced a host of still-unresolved disputes, given ambiguity in how the rules should account for this new technology.⁴⁶ Consumers ultimately bear the burden of these massive and needless transaction costs.

Adoption of the Plan would sharply reduce these costs. By providing a unitary, forward-looking rule of law, the Plan would encourage commercial solutions and intercarrier agreements and save resources that providers now expend to detect and prevent fraud; litigate disputes; and administer compliance with dozens of different regulatory programs. Further, it would permit

⁴⁵ See, e.g., *FNPRM* at 4728 ¶ 91 (“[C]ompetitive LECs appear to have targeted customers that primarily or solely receive traffic, such as ISPs, in order to become net recipients of traffic.”) (citing *NPRM* at 9616 ¶ 11).

⁴⁶ See, e.g., Memorandum Opinion and Order, *Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004).

providers to craft business plans based on a clear sense of the rules with confidence that those rules would not suddenly be subject to substantial disruption due to the development of new technologies. Consumers would be the ultimate beneficiaries of this new regulatory stability, as providers stop devoting their attention to exploiting or closing regulatory loopholes and refocus on ways to increase consumer value through new and different services that are based on sustainable efficiencies. And by eliminating rules that favor or disfavor particular technologies or services, the Plan should facilitate bundled service offerings, which are proving to be increasingly popular with consumers. In addition, the Plan should allow carriers to simplify their cost structures, which will make it easier for consumers to compare service offerings and make more educated choices. Finally, in rural areas, consumers should also benefit because the reduction in high access charges will result in larger local calling areas, increased long distance competition and lower retail rates for all but the lowest-volume users.

The Plan also should benefit consumers because its provisions will allow carriers to shift their focus toward investing in new network facilities and new advanced services. While a host of advanced services and technologies have sprung up in recent years, all of these ultimately depend on the existence of robust backbone and last-mile facilities throughout the nation. But facilities-based providers need secure investment incentives to deploy those facilities, and they need to know that deploying broadband facilities will ultimately *increase*, not deplete, their revenues. The absence of such certainty has been a particularly critical problem in rural areas, where access charges have played such a significant role in supporting provider networks and services. For example, VoIP's threat to access charge revenues can serve as a powerful disincentive for a rural carrier to expend the resources necessary to deploy broadband facilities to

rural consumers, or to develop its own VoIP services. The clear rules the Plan provides for VoIP-PSTN traffic helps eliminate a major stumbling block in rural broadband investment.

More generally, the Plan's general step-down of access charges and shift to consumer-based charges, as well as the various revenue support mechanisms it puts in place, should ensure that providers in rural areas and across the country will have the ability to support and build out a robust advanced network to support tomorrow's generation of advanced services. This shift is important to the nation overall, which lags badly behind others in broadband deployment.⁴⁷ And it will be especially important in rural areas, where consumers are sorely in need of more broadband facilities and advanced services. More generally, the Plan should begin to shift all provider relations to a more backbone-based model, where traffic hand-offs are not generally profit-seeking transactions but efficiency-enhancing arrangements for providers who look to their end-user customers for their primary source of revenue.

B. The Plan Will Provide Concrete Cost Savings to Consumers

Finally, in the increasingly competitive communications marketplace, carrier cost savings under the Plan will pass through to consumers. To begin with, consumers will benefit as the administrative costs of litigation, arbitration, fraud, and fraud detection drop sharply. But more specifically, consumers will benefit from the lower intercarrier compensation rates the Plan will phase in for all providers. To be sure, the Plan *permits* a phase-in of SLC increases in conjunction with the decreases in intercarrier compensation rates. But these are not on par with

⁴⁷ See International Telecommunications Union (ITU), Economies by broadband penetration, 2005, http://www.itu.int/ITU-D/ict/statistics/at_glance/top20_broad_2005.html (ranking the U.s. 16th worldwide in broadband deployment); Organization for Economic Cooperation and Development (OECD), Information and Communications Policy, OECD Broadband Statistics to June 2006, <http://www.oecd.org/sti/ict/broadband> (ranking the U.S. 12th amongst OECD member nations in broadband subscribership).

the decreases — no one seriously suggests that consumers could suddenly absorb the full increases that would be necessary to entirely replace intercarrier compensation. (This is, of course, why the Plan includes the Restructure Mechanism for carriers that would be most affected by the phase-out of longstanding access charges.) And more importantly, in the increasingly competitive environment that exists today and — an environment in which *all* carriers will compete to offer bundles of services to consumers — many carriers will hesitate to pass on the full amount of their permitted SLC increases to consumers.⁴⁸ This effect will, of course, only be magnified by all the Plan’s other pro-competitive terms.

NASUCA worries that long-distance providers, in particular, will fail to pass through their savings from reduced access charges.⁴⁹ But if history is a guide, it is clear that in a competitive market (and as illustrated by the increasing degree of competition among LEC, cable-VoIP and wireless competitors, this market is clearly competitive), intercarrier rate savings must be passed on to consumers. In the traditional long-distance market, as access charges have dropped, consumer charges have dropped as well. The FCC predicted, for example, that the savings associated with CALLS would filter down to consumers,⁵⁰ and there is no question that long distance rates have dropped steadily in the years since CALLS was adopted.⁵¹ A handful of

⁴⁸ The Missoula Plan also, of course, ensures that Lifeline support for low-income consumers will be adjusted to compensate for any SLC increases. *See* Missoula Plan at 79.

⁴⁹ NASUCA Comments at 25-27.

⁵⁰ Sixth Report and Order, *Access Charge Reform*, 15 FCC Rcd 12962, 13068-69 ¶ 246 (“We expect the IXCs will pass through these access charge reductions in a manner that benefits both residential and business customers.”).

⁵¹ *See* Industry Analysis & Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, Tables 1.15, 2.6, and 3.1* (2006) (showing consistent downward trends in (1) average revenue per minute for interstate toll service calls, (2) average monthly household long distance expenditures, and (3)

state commissions suggest rules *requiring* ILECs to pass through rate reductions to consumers,⁵² but given the weight of the evidence, this hardly seems necessary — particularly in a bundled product market where measuring and attributing price reductions to any one product is increasingly subjective and of decreasing relevance. Where market dynamics promise the precise effects regulators seek, it makes little sense to *begin* with regulation by anticipating market failure. The market is a more even-handed, efficient “regulator” than a new set of bureaucratic, difficult-to-enforce revenue-sharing rules — rules that will require regulatory review of carrier books, audits, or other intrusive measures that would produce little gain at much cost.

inflation-adjusted long-distance consumer price indices, throughout the post-CALLS period), at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266857A1.pdf.

⁵² See California PUC Comments 22; New York DPS Comments at 6; Wisconsin PSC Comments at 11.

CONCLUSION

For all the reasons set forth above, USTelecom endorses the Missoula Plan, and encourages the Commission to adopt it promptly and to begin implementation quickly thereafter.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

James W. Olson
Indra Sehdev Chalk

Its Attorneys

607 14th Street, NW, Suite 400
Washington, D.C. 20005-2164
(202) 326-7300

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