

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

In the Matter of

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)

Developing a Unified Inter-carrier
Compensation Regime

)

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CC Docket No. 01-92

**REPLY COMMENTS OF
MINNESOTA INDEPENDENT COALITION**

February 1, 2007

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The initial comments show that the Missoula Plan (the “Plan”) has incorporated appropriate principles, and that the steps set forth in the Plan will, with limited clarifications and adjustments, provide both substantial progress in addressing intercarrier compensation and a workable process for further reform. The Plan reflects substantial differences between carriers and appropriately rejects a one-size-fits-all approach. Comments urging such an approach should be rejected because of the substantial adverse impact that would result, particularly for customers in high cost areas.

The phased approach reflected in the Plan is not a defect, but is the best approach available. Such an approach will moderate customer impacts, which should be a top priority goal, and allow the Commission to obtain further and better information to guide future phases of the reform process.

Critics of the Plan have neither demonstrated a better course of action, nor have they shown that no action should be taken. Rather, the Commission should proceed with the Plan, with only limited clarifications and adjustments needed.

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REPLY COMMENTS OF MINNESOTA INDEPENDENT COALITION

The following Reply Comments are submitted by the Minnesota Independent Coalition (“MIC”)¹ in response to the Commission’s December 22, 2006 Order.² These Reply Comments will address only a few of the initial comments that address aspects of the Missoula Plan (the “Plan”) that have particular impact on Track 3 Incumbent Local Exchange Carriers (“ILECs”).

The initial comments demonstrate that the Plan represents the most appropriate course of action for the reform of intercarrier compensation. Critics of the Plan have neither demonstrated a better course of action, nor have they shown that no action should be taken. Rather, the initial comments show that the Plan has incorporated appropriate principles, and that the steps set forth in the Plan will, with limited clarifications and adjustments, provide both substantial progress in addressing intercarrier compensation and a workable process for further reform.

Intercarrier arrangements are, and will likely remain, highly dynamic. As a result, the phased approach reflected in the Plan is not a defect, but is the best approach available. It

¹ The MIC is an unincorporated association of over seventy-five small, Incumbent Local Exchange Carriers (“ILECs”) providing local exchange service to primarily rural areas in Minnesota. MIC members average approximately 4,800 access lines, although half of the MIC members have fewer than 1,800 access lines. The average number of access lines per exchange is approximately 1,100, with half having less than 600 access lines.

² Order released December 22, 2006, DA 06-2577.

provides for substantial current steps, and a mechanism to make further determinations on the basis of more and better information that will become available after implementation of the initial phase of the Plan.

I. THE PLAN REFLECTS BOTH APPROPRIATE PRINCIPLES AND SUBSTANTIAL PROGRESS.

The Plan reflects: (i) appropriate principles to accomplish the reform of intercarrier compensation; and (ii) substantial and achievable set of steps toward reform. Critics of the Plan err in the extremes, with some critics recommending inappropriate principles, others recommending either no action or too little action, and others recommending premature decisions that cannot be reasonably made until the impacts of initial phases of the Plan become more clear with time.

A. Material Differences Between Carriers Must Be Recognized And Accommodated.

A number of comments continue to urge the Commission to adopt a single set of rules including the establishment of rates that would apply to all carriers, irrespective of their individual characteristics.³ Such comments variously urge the Commission to reject the implementation of different tracks for different carriers and urge the Commission to adopt either a single set of rates applicable to all carriers for all traffic or to implement the absence of any rates for any traffic.⁴

While the details of these comments may differ, all suffer from the same fundamental defect of ignoring obvious and material differences between carriers. Such an approach would

³ Alltel, pp. 6, 8; Time Warner Cable, p. 8; Time Warner Telecom, p. 16; Qwest, pp. 12, 16; Sprint/Nextel, p. 10; National Cable & Telecommunications Association, pp. 27-29.

⁴ Time Warner Cable, pp. 5, 6, 8, 14; Qwest, pp. 2, 12, 13; Sprint/Nextel, pp. 8, 31; T-Mobile, p. 4.

be unjust under any circumstances, and is made all the worse because of the severe impact it could have on ratepayers and its inconsistency with the core Congressional policy objective of maintaining reasonably comparable rates and services in urban and rural area.⁵ The Commission has recognized the importance of preserving service at reasonable rates,⁶ and that retaining intercarrier compensation may be necessary to do so.⁷ Accordingly, the Commission should categorically reject comments and recommendations that call for elimination of all compensation to Track 3 carriers or that ignore differences between carriers.

B. Material Progress, Not All Or Nothing Alternatives, Should Be Standard For Evaluation.

Some comments urge the Commission to reject the plan because the Plan does not fully resolve all problems.⁸ Other comments urge the Commission to take no, or meaningless, action.⁹ Still others urge the Commission to make decisions that will not become effective for several years, based on unfounded assumptions.¹⁰ The Commission should reject all of these extremes.

⁵ 47 U.S.C. § 254(b)(3) reads in part:

Consumers ... in rural, insular, and high cost areas, should have access to telecommunications and information services, ... at rates that are reasonably comparable to rates charged for similar services in urban areas.

⁶ FURTHER NOTICE OF PROPOSED RULEMAKING, CC Docket No. 01-92, released March 3, 2005 (the “*FNPRM*”) provides:

Because of the high costs associated with serving rural areas, we must be certain that any reform of compensation mechanisms does not jeopardize the ability of rural consumers to receive service at reasonable rates. At ¶ 32.

⁷ The *FNPRM* further provides:

With respect to rate-of-return LECs in particular, we recognize that an approach that retains some intercarrier payments from IXCs for switched access services may be appropriate.

⁸ NASUCA, p. 15; Verizon, pp. 5, 6.

⁹ Dobson/ACC, pp. 15-16; NASUCA, pp. 7-14.

¹⁰ Qwest, pp. 18, 19, 21; NASUCA, pp. 76-77; Time Warner Cable, pp. 25-26; AllTel/SunCom, pp. 19-20.

The appropriate standards for evaluation are: (i) whether the Plan makes material progress in resolving issues; and (ii) whether there are better alternatives that have been presented. The Plan should be adopted because it makes current, material progress (along with providing a template and timetable for future progress), and provides the best alternative available.

The Plan attends to the issue of making significant progress towards unifying each carrier's rates for various traffic types. For the largest carriers with the vast majority of the traffic, the Plan resolves virtually all issues in the near future. For the smaller carriers, with far less traffic, the Plan establishes a timetable to resolve the most significant discrepancies and a timetable for considering and resolving other issues. This phased approach (with the deferral of some issues), is not a defect, but a strength of the Plan, which the Commission should adopt without reservation. The Plan appropriately incorporates future fact gathering and decision making for current speculation.

Some comments urge rejection of the plan, but offer no more than a statement of principles.¹¹ These comments provide no adequate substitute for the Plan and should be rejected. Serious issues relating to intercarrier compensation have been recognized for many years and are reflected in many federal and state proceedings. This proceeding has itself been pending for several years, and the efforts that led to the Plan have been the subject of public comment and industry coverage for over 12 months. Accordingly, it is clear that no party can reasonably claim a lack of opportunity to present its own plan.

¹¹ T-Mobile, pp. 2, 3; Verizon, pp. 2-5; National Cable & Telecommunications Assoc., p. 22.

In this context, the Commission must conclude that statements of principles (that are provided in lieu of a plan) provide no adequate basis to reject the Plan. Material progress is far better than suspension of any action while a continuing debate or a search for the ultimate solution would continue.

C. Achievement Of National Telecommunications Policy Goals Requires Reasonable Stability.

The Commission should also give significant weight to the national policy goals of: (i) preserving comparability of both rates and services between urban and rural areas; and (ii) promoting the deployment of advanced telecommunications networks in all areas. In many situations, fulfilling these goals requires deployment of investment in locations where market demand cannot support the risk of making the investment. Accordingly, other sources of stability are needed if the investments are to be made.

If the rationale for not providing such stability is that it is inconsistent with a competitive market, it must be recognized that competitive markets allow competitors to exit portions of markets and do not necessarily lead to the availability of all services to all customers, particularly at reasonably comparable prices. If such stability cannot be provided, the carriers cannot be expected to make such investments and should not be required to do so. Specifically, if carriers are denied such stability, they cannot reasonably be required to continue to fulfill carrier-of-last resort responsibilities, or to continue to make substantial and long lasting investments in high cost markets.

D. The Goals Of Preserving Reasonably Comparable Rates And Services In Urban And Rural Areas Should Take Priority.

The comments urge a very broad array of goals on the Commission, often in isolation from discussion of other relevant goals. Prioritizing goals is essential for the Commission to resolve the issues presented in this docket. The Act expressly identifies the goal of preserving the comparability of urban and rural rates,¹² and the Commission has recognized the high priority of assuring quality service in high cost rural areas.¹³

Some arguments are based on considerations that are clearly out of balance. For example, it is clear that the expense of modifying billing systems does not justify ignoring material differences between carriers.¹⁴ In other cases, the task of weighing and balancing the competing goals is far more subtle and far more difficult.

The MIC submits that the goals of maintaining reasonably comparable rates and services in urban and rural areas should be a first priority goal, along with the goal of protecting customers from unwarranted rate increases.

¹² U.S.C. § 254(b)(3).

¹³ The *FNPRM* provides in part:

Preservation of universal service is another priority under the Act and we recognize that fulfillment of this mandate must be a consideration in the development of any intercarrier compensation regime. This Commission remains committed to universal service, and we are particularly sensitive to the interests of rural and high-cost communities. At ¶ 32.

[Footnote omitted.]

¹⁴ Qwest, p. 16.

E. Decisions That Rest On Unfounded Factual Predictions Or Premises Should Be Deferred.

Some comments recommend that the Commission commit to future actions when the consequences of those actions cannot be known with any degree of confidence.¹⁵ These comments, in effect, urge the Commission to either speculate as to future facts or make decisions without regard to the facts. Such recommendations should be rejected.

In place of reliance on unfounded predictions, the Plan recommends a process by which the Commission can make all decisions needed for the next several years, and by which the Commission will have the opportunity to obtain more facts from a perspective closer to the time when the next round of decisions and refinements would occur. Such an approach is virtually certain to provide a better view of the facts and should be adopted, while comments recommending that the Commission make more decisions than are currently needed should be rejected.

II. RESPONSE TO SPECIFIC COMMENTS.

A. Comments Urging Adoption Of A Single Set Of Rates For All Carriers Should Be Rejected.

Some comments urge the Commission to adopt a single set of rates for all carriers and for all traffic, offering a variety of arguments.¹⁶ For example, Qwest argues for adoption of a single set of rates (and practices) for all carriers, irrespective of characteristics, to prevent inconvenient modifications to its billing systems.¹⁷ Other comments urge the Commission to abolish virtually

¹⁵ Qwest, pp. 18, 19, 21; NASUCA, pp. 76-77; Time Warner Cable, pp. 25-26; AllTel/SunCom, pp. 19-20.

¹⁶ Alltel, pp. 6, 8; Time Warner Cable, pp. 7-8; Time Warner Telecom, p. 16; Qwest; pp. 12, 16; Sprint/Nextel, p. 10; National Cable & Telecommunications Association, pp. 27-29.

¹⁷ Qwest, pp. 2, 16, 19.

any compensation for any traffic.¹⁸ Such comments are variations on the same theme, and suffer from the same defects: ignoring material cost differences between carriers, and ignoring the impacts such reductions might have on a carrier's ability to continue to provide quality service, especially in high cost rural areas.

It cannot be seriously denied that different carriers are faced with very different costs of providing service. The most obvious differences are between urban and rural carriers serving sparsely populated areas. In the absence of recognition and accommodation, these differences will have substantial adverse public policy ramifications. If a single set of intercarrier compensation rates is implemented that would reflect rural cost characteristics, carriers in urban areas would recover significantly more than the reasonable cost of providing service. If a single set of intercarrier compensation rates is implemented that would reflect urban cost characteristics, then rural carriers will recover significantly less than the cost of providing service.

Rural carriers would be unable to recover such costs without local rate increases that would violate Congressional policy of rate comparability between urban and rural areas. More likely, market conditions and/or state commissions would prevent such rural rates from being implemented, with the result that the Congressional goals of reasonable comparability of services and network development would be violated. The solution to the apparent dilemma is to adopt different rates that fairly reflect the different costs of the carriers and provide a reasonable/achievable balance of cost recovery among end users, intercarrier compensation and a

¹⁸ Qwest, p. 2; Sprint/Nextel, pp. 8; T-Mobile, p. 4.

Restructure Mechanism (“RM”). The Plan is the only proposal before the FCC to accomplish this balance.

The need to have rates that reflect cost differences does not, however, mean that the status quo must be accepted or that no progress is possible toward intercarrier compensation reform. Rather, the Plan presents an approach that moves substantially to the only realistic goal, which is a *single rate per carrier* for all types of traffic. The Plan does so by establishing a first phase to deal with the most significant departure from that goal (through the unification of state and interstate access rates), to be followed by further progress toward a single unified rate per carrier. Clearly, it will not be necessary to have each carrier have a different rate. Rather, unification of rates by category of carrier and/or through a National Exchange Carrier Association pooling process will be the logical outcome.

B. The RM Is Appropriate, And It Would Be Premature To Decide When, Or How, To Phase-Down The RM.

Some parties argue that if the RM is adopted, payment levels must be phased down.¹⁹ To the contrary, there is no need to make such a decision, and it is premature to speculate what the facts may be at the end of the first phase.

Recommendations to commit to ending the RM at a specific point of time in the future are, at best, premature because the Commission cannot know at the present time whether there will be a need for the RM in the future in order to accomplish Congressional policies. At worst, such recommendations reflect indifference to the practical consequences, especially to rural consumers, a stance that the Commission has properly rejected on many prior occasions.

¹⁹ Time Warner, pp. 25-26; AllTel/SunCom, pp. 19-20.

The continued viability of the RM is also essential. It would not be feasible to begin the process with an adequate RM, only to have the demand for the RM rise to unsustainable levels. Accordingly, it is appropriate to limit access to the RM to prevent it from becoming overloaded by considerations that have nothing to do with reform of current intercarrier compensation. To meet this objective the RM should be treated as an access element and should only be available to carriers that experience loss of access or net intercarrier compensation as a result of the Plan's implementation.²⁰

Some parties have argued that the RM should be treated as a portable universal service element.²¹ To the contrary, intercarrier compensation reform is not intended to increase revenues, and the RM should not be used to provide a *new source* of revenues for carriers who are not losing revenues as a result of reform. Rather, it should be limited to carriers who experience a net decrease in intercarrier compensation revenue.

Providing new revenues to carriers will substantially increase the size of the RM without any material contribution to the purposes of intercarrier compensation reform. Recent experience with the universal service fund provides a clear example of the unintended and unexpected effects of expanding the purpose of a discrete funding program to include new objectives.

The RM should be made available to all carriers that experience a planned reduction in intercarrier compensation revenues, including both reductions in access charges (and reciprocal compensation). Such carriers would include both ILECs and competitive local exchange carriers

²⁰ MIC Comments, pp. 7-8.

²¹ AllTel/SunCom, p. 19.

("CLECs"). All such carriers should receive RM payments based on the extent of their actual net reductions of revenues, to the extent that their revenues are reduced by amounts greater than the Subscriber Line Charges ("SLCs") provided under the Plan.

C. The Plan Provides A Level Of Predictability, But Does Not Assure Revenue Neutrality.

Some comments attack the Plan as providing inappropriate "revenue neutrality" for carriers.²² Those comments should be rejected because the Plan does not provide an assurance of uninterrupted revenues, and the replacement of one source of cost recovery (access charges) with other sources (authorized subscriber line charge increases and a restructure mechanism) would not be inappropriate, even if the recovery of these sources of revenue was assured.

The Plan does not assure that carriers will recover any increases in SLCs. Rather, the Plan simply *authorizes* the carriers to impose the charges. For vast majority of carriers in the vast majority of locations, customers have other choices to obtain telecommunications services, typically from commercial mobile radio service ("CMRS") providers and often from cable television providers as well. These customers have competitive alternatives, and the presence of those competitive alternatives may make it impossible for carriers to impose the authorized SLC increases. If the carriers are unable to do so, they will absorb the short-fall in revenue, because the RM is calculated as though the carriers imposed and collected the full amount of the authorized SLCs.

The number of customers in areas so remote that there are no CMRS alternatives is very limited, and the costs of providing service in such areas is undoubtedly very high. Accordingly,

²² Qwest, p. 18; AllTel/SunCom, p. 16; Dobson/ACC, p. 15; Time Warner Cable, p. 22.

even if this very limited number of customers have no alternatives to payment of additional SLCs, there will be very little financial impact, and very little opportunity for any ILECs to achieve assured revenue neutrality.

Further, the level of predictable cost recovery provided by the Plan is not out of proportion and is needed to accomplish national policies of comparable rates and services in urban and rural areas, to assure service to all customers, and to promote the deployment of advanced services in all locations. The fulfillment of these objectives requires that the costs of providing the facilities and services be appropriately supported. The RM provides such support.

D. Transition Is As Rapid As Possible, And It May Be Appropriate To Slow The Pace In Some Situations.

A number of parties have indicated that the impacts on rural customers may be excessive and may be inconsistent with the goals of providing reasonably comparable services and rates in urban and rural areas.²³ Reducing intrastate access rates for Track 3 ILECs to interstate access levels in 4 years is aggressive. These changes will, in effect, require significant increases to end user SLCs over a relatively short period. While the MIC does not object to such changes, there is merit to the concerns expressed by other parties that the pace of change may be too aggressive in some situations. While the goal of achieving a fair result between carriers is significant, that goal should take second priority to the goals of preserving comparable rates and services in urban and rural areas and of protecting customers from unwarranted rate increases.

²³ CenturyTel, pp. iii, 3; Public Service Commission of Wisconsin, p. 4.

As a result, the MIC supports the comments that ask the Commission to consider whether the rate increases called for in the Plan should be modified in some cases. The comments make it clear that the SLC increases called for in the Plan should not be increased to any higher level.

E. Rural Transport Rules And Rates Reflect The Higher Costs Of Service In Rural Areas.

Some parties have argued that transport rates should be the same for all carriers in all locations.²⁴ Those recommendations should be rejected because they ignore the facts that the costs of Track 2 and Track 3 carriers are higher, and in many cases significantly higher, than the blended costs of Track 1 carriers, even those Track 1 carriers with rural service areas.

Similarly, some parties have argued that the transport rules and requirements should be the same for all carriers in all locations.²⁵ These comments also ignore the significant differences in both the costs and the network characteristics of the Track 1 and Tracks 2 and 3 carriers. Track 1 carriers have economies of scope and scale that are not available to most Track 2 and Track 3 carriers. Ignoring these differences would lead to the imposition of inappropriate solutions and obligations. While a one-size-fits-all solution has the superficial appeal of simplicity and symmetry, the reality is that such an approach will cause severe misapplications of duties and costs.

²⁴ Qwest, pp. 12, 16.

²⁵ Qwest, p. 15.

F. Transit And Tandem Service Providers Have Obligations Because Of Their Role In The Interconnected PSTN.

Some parties have recommended that rates for tandem services should not be subject to any oversight, but rather set at “market” levels.²⁶ Some parties have also suggested that the Commission lacks the authority to set such transit service rates.²⁷ These comments should be rejected.

Rates for transit services should not be left uncontrolled or to the “market” because in many locations there is no market that would impose any control on those rates. Specifically, in many locations, there are no realistic options to the use of the tandems provided by the Track 1 carriers. Rather, tandem service is largely a bottleneck, single-source service, particularly for Track 2 and Track 3 ILECs. A Track 2 or Track 3 ILEC subtending a tandem must, except in unusual cases where traffic volumes exchanged with a particular IXC, CLEC or ILEC are quite large, receive its traffic indirectly through the tandem operator. In addition, many Track 2 and Track 3 ILECs have no practical alternative to using tandems for origination of traffic.

The authority of the Commission (and the states) to control those rates is no different than the authority being used today. These tandem services and tandem rates will retain their current functional significance (whether as an aspect of access or local interconnection service) even if the rates for the two types of service are unified. Accordingly, the Commission should not fully deregulate tandem service.

²⁶ Qwest, p. 30.

²⁷ Qwest, p. 29.

G. Transit Service Providers Should Not Be Authorized To Add New Charges On ILECs In EAS Areas.

Some parties have suggested that the Commission should adopt a policy that would authorize tandem service providers to begin imposing tandem charges on incumbent local exchange carriers for providing the same transiting services not provided in local calling areas.²⁸ To the contrary, the Commission should not alter existing service arrangements and should leave such matters to the state commissions.

The purpose of the current proceeding is not to develop significant new sources of revenue for providing existing services. Rather, it is intended to generally reduce charges for services between carriers. Certainly, there is no justification for altering the basis for local calling areas previously established by order of state commissions, or to eliminate the authority of state commissions over such calling areas. This is especially true when there is no indication that the tandem service providers are not already recovering the costs of providing such services. Further, some comments have shown that the impacts of adopting such policies may be severe in some cases. Such matters should be left to the state commissions.

III. CONCLUSION.

The MIC continues to support the Plan, subject to the need for limited modifications that can be readily accomplished without altering the basic structure or balance of the Plan.

The Plan is based on common principles, but has established separate implementation provisions for Track 3 ILECs, which match their characteristics. However, CLECs serving rural areas are treated like Track 1 ILECs, which does not match their characteristics, and some rural

²⁸ Qwest, p. 18.

