

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

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

**Reply Comments of the
Ad Hoc Telecommunications Users Committee**

The AdHoc Telecommunications Users Committee (“AdHoc” or the “Committee”) hereby replies to certain comments filed in the above-captioned matter.

AdHoc continues to believe that current intercarrier compensation arrangements are economically inefficient, create distortions among competing technologies and service providers, and lead to misallocation of economic resources by vendors and customers. Unfortunately the Missoula Plan (“the Plan”) suffers from fatal deficiencies – deficiencies that have caused AdHoc to oppose adoption of the Plan as proposed. After reviewing comments filed by other parties, AdHoc renews its plea that the Commission not adopt the Missoula Plan as proposed. AdHoc also is more convinced than ever that Rural Local Exchange Carriers (RLECs) present difficult problems – problems that have likely caused a major part of the deficiencies in the Missoula Plan. Accordingly, AdHoc again recommends that the Commission defer imposing a new, unified

intercarrier compensation regime on RLECs at this time. The level of economic distortion caused by RLEC intercarrier compensation charges is relatively small compared to the distortions caused by intercarrier compensation charges levied by larger local exchange carriers.¹

Opposition to the Plan is at least as broad as support for the Plan. Strong oppositions have been filed by numerous parties, including Verizon, Qwest, COMPTTEL, wireless service providers and their trade association, cable television interests, consumer advocates and state regulatory authorities.² If the Commission was hoping that consensus support would form around the Plan, it must be disappointed.

A. Subsidizing RLECs Through The Restructure Mechanism Has Not Been Justified.

The Restructure Mechanism, in conjunction with rate structure changes and the Universal Service Fund (USF), is designed to perpetuate RLEC revenues. CTIA explains that the Restructure Mechanism would increase USF-like funding requirements by about thirty-two percent.³ The Commission cannot reasonably sanction such an increase without knowing whether the RLECs need the level of funding specifically earmarked for rural LECs by the Restructure Mechanism to have “reasonable” earnings or to modernize networks. No evidence exists in this docket or the Commission’s records, AdHoc believes, that would allow the Commission to know based on a reasoned analysis of data that price cap LECs or rate-of-return regulated RLECs are earning only reasonable

¹ AdHoc Comments, at 14-16.

² Verizon’s comments, at pp 7 -13, explain well that the Plan would perpetuate excessively high rural access rates and actually provide windfalls to Track 2 and 3 LECs.

³ CTIA Comments, at 32.

returns, or the extent to which the RLECs' plant would need to be upgraded. None of the Plan supporters have made showings that rate of return carriers would need to make to justify using the Restructure Mechanism for revenue neutrality or plant modernization purposes. Nor, as CTIA points out, do the Communications Act or the Commission's Rules guarantee ILEC revenues.⁴ Apparently the Plan supporters believed that winning RLEC support would be so important that the Commission would sanction the bold attempt to guarantee RLEC revenues through the Restructure Mechanism.

Furthermore, other parties have explained that the Restructure Mechanism causes the Plan *not* to be competitively neutral. For example, the National Cable and Telecommunications Association observes, at page 18 of its comments, that,

Despite the name, the Restructure Mechanism is exactly like a universal service fund, except that it is not open to competitive providers. This is a clear violation of federal law and completely at odds with the Commission's goal of competitive neutrality.

CTIA reasonably argues at pages 5 and 6 of its Comments that, "[t]he supporters [of the Plan] provide no valid justification as to why the Plan's impact on ILECs – but not CLECs – should be revenue neutral."

The Commission would act unlawfully were it to increase subsidies flowing to RLECs merely because RLECs want to maintain current revenue levels and AT&T is willing to make major compromises to win RLEC support for the Plan.

⁴ CTIA Comments, at 27-28

B. Even If The Commission Were To Exclude RLECs From The Initial Implementation Of A New Inter-Carrier Compensation Scheme, The Plan Has Other Defects That Must Be Corrected.

In addition to the Restructure Mechanism, the Plan has other features and effects that parties rightfully find objectionable.

1. The Commission Should Mandate A “Fresh Look” Opportunity

Several state regulatory authorities, as well as COMPTTEL, maintain that while consumers would pay higher Subscriber Line Charges and Restructure Mechanism charges under the Plan, they may not see economic benefit in the form of lower long distance charges. The Texas Public Utility Commission contends that the Plan may benefit “heavy users” of long distance services, but that, “[n]o customers will experience benefits from the Plan if reductions in access charges are not flowed through to retail rates, and the Plan does not appear to require such a flow through.”⁵ With respect to this aspect of the Plan, the problem is more nuanced than some opponents suggest.

The Plan *should* produce lower long distance rates if (1) the long distance market, properly defined, is effectively competitive and (2) consumers are not prevented from using the competitive market to take advantage of lower rates. If certain areas lack long distance competition, a proposition not supported by opponents of the Plan, the Plan would, in those areas, disadvantage consumers. With cable telephony, VoIP service and wireless service, however, the consumer market would appear competitive at this time. Moreover, consumers would be free to change long distance carriers on relatively short notice to take advantage of lower rates, unless they are prevented from doing so by multi-year contracts.

⁵ Public Utility Commission of Texas Comments, at 3.

Many large consumers of long distance service, including members of the Committee are parties to such contracts. The Plan would disadvantage persons so constrained. Accordingly, AdHoc suggested in its Comments that if the Commission adopts a new intercarrier compensation scheme that reduces access charges and imposes other charges directly on end users, it should afford end users a “fresh look” opportunity.⁶ A 180-day “fresh-look” opportunity would give persons constrained by multi-year contracts a market-based opportunity to gain some benefit from significant reductions in long distance carriers’ access costs – reductions made possible by increasing Subscriber Line Charges. This approach would be consistent with past precedent and would save intercarrier compensation reform from claims of consumer exploitation and carrier enrichment.⁷

2. The Commission Should Not Allow Charges To Float With Inflation

AdHoc objected to that aspect of the Plan that would allow Subscriber Line Charges to rise with inflation at step five.⁸ CTIA objects to that aspect of the Plan that would increase transit rates by inflation at step five.⁹ AdHoc’s Comments explain that this approach to adjusting rates would also be inconsistent with prior Commission findings that LEC costs inflate at a rate lower than economy-wide inflation.¹⁰ The Plan supporters have not provided a reasoned basis for adjustments driven by the rate of inflation.

⁶ AdHoc Comments, at 19-20

⁷ *Id.*

⁸ *Id.*, at 18

⁹ CTIA Comments, at 14

¹⁰ AdHoc Comments, at 18

C. Conclusion

The Commission should not adopt the Missoula Plan as proposed. In an apparent effort to win support from the RLECs, an unjustified Restructure Mechanism and excessive access charges for Track 2 and 3 local exchange carriers were built into the Plan with no persuasive justification. The Plan shows substantial effort at reaching a “deal,” at, in effect, buying off the RLECs, largely at the expense of consumers, large and small. The Commission should indeed adopt a rational and consistent intercarrier compensation model. Regrettably, the Plan is not such a model.

Respectfully submitted,

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Certificate of Service

I, Dorothy R. Nederman, hereby certify that true and correct copies of the preceding Comments of Ad Hoc Telecommunications Users Committee were filed this 1st day of February, 2007 via the FCC's ECFS system, and served by e-mail to:

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