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 GENERAL COMMUNICATION, INC.

Tina Pidgeon
Vice-President –
Federal Regulatory Affairs
Maureen Flood
Federal Regulatory Attorney
General Communication, Inc.
1130 17th Street, N.W., Suite 312
Washington, D.C. 20036
(202) 457-8814
(202) 457-8816 FAX

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I. INTRODUCTION AND SUMMARY

The Missoula Plan is not a plan for intercarrier compensation reform. Rather, the Missoula Plan is a thinly veiled attempt by incumbent local exchange carriers ("ILECs") to shield declining intercarrier compensation revenues from the forces of competition. In effect, the ILECs hope to achieve through regulation what they cannot achieve through the marketplace. But the Commission must not confuse the interests of entrenched monopolists with the public interest. Not only are they not the same, the former is in direct conflict with the latter, for all of the reasons that General Communication, Inc. ("GCI")set forth in its initial comments.

As an ILEC-centric plan, it should come as no surprise to the Commission that the only Missoula Plan supporters thus far are ILECs, their associations, and two large backbone providers (Level 3 and Global Crossing) that do not compete with the ILECs to serve mass market customers. While the Missoula Plan supporters laud the number of companies that support the plan, notably lacking is any diversity in interest. By contrast, virtually every other party that filed comments opposes the Missoula Plan based on the fact that it would not serve the public interest, though they have different reasons for finding this to be the case. For example, opposition from competitive providers is overwhelming. Wireless carriers,[1] cable providers,[2] competitive local exchange carriers ("CLECs"),[3] and VoIP providers[4] all oppose the plan on the basis that it would be detrimental to competition. Thus, while the Missoula Plan supporters continue to argue that it is a consensus plan, and claim that they have "endeavored to accommodate, where possible, the concerns of … parties to encourage them to support the Plan," that is only one-half of the story.[5] The Missoula Plan proponents only have made efforts to accommodate the concerns of other incumbents, not competitors. Indeed, recent changes to the plan – which include expanding the definition of a Track 3 carrier to include mid-sized ILECs, like Embarq and Alaska Communications Systems ("ACS") – merely reinforce the fact that the plan discriminates against competitors, to the advantage of ILECs. But that's the whole point.

Likewise, the Missoula Plan faces opposition from both state regulators and consumer advocates, so it cannot be argued that the plan only faces opposition because it "does not advance the individual interests or policy positions of any particular company or class of carriers."[6] After all, state commissions not only have to balance the interests of a diverse array of telecommunications carriers, they also have to protect the interests of consumers. The Missoula Plan, if enacted, will eliminate competition and the many benefits it delivers to consumers, including improved quality of service, the development

[1] *See, e.g.*, CTIA Comments; Sprint Nextel Comments; Verizon Wireless Comments.

[2] *See, e.g.*, NCTA Comments; Time Warner Cable Comments.

[3] *See, e.g.*, Cavalier Telephone et al. Comments; Broadview Networks et al. Comments; Time Warner Telecom et al. Comments.

[4] *See, e.g.*, UTEX Communications Corporation Comments.

[5] Missoula Plan Supporters' Comments at 13.

[6] *Id.* at 5.

of innovative new services and packages thereof, and lower prices. And by erecting barriers to competition, the Missoula Plan not only forces consumers to contribute *at least* an additional $2.225 billion to universal service today – a 32 percent increase in the current $7 billion USF – it eliminates any mechanism that would reduce the level of required support over time.[7] It is the Missoula Plan's fundamentally anti-competitive and therefore anti-consumer bias that has resulted in unanimous opposition from consumer advocates and a complete absence of support from any state commission.[8]

The sheer diversity among the opponents of the Missoula Plan and the reasons for their opposition provides grounds enough for rejecting the Missoula Plan outright, as this opposition demonstrates that it is not truly a consensus plan that accommodates the interests of competitive carriers or consumers. Tellingly, in their initial comments, the Missoula Plan supporters offered little justification for the plan on public policy grounds; rather, their primary argument is that because the Missoula Plan confers significant benefits on them, it must be in the public interest. GCI disagrees, for all of the reasons

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[7] The amount of additional universal service support could grow to $2.8 billion if the Commission were to adopt the federal benchmark mechanism recently proposed by the Missoula Plan supporters and five state commissions. *See* Section VI below.

[8] *See, e.g.,* Missouri Public Service Commission Comments; Illinois Commerce Commission Comments; Public Utilities Commission of Ohio Comments; New York Department of Public Service Comments; New Jersey Board of Public Utilities Comments; Delaware Public Service Commission Comments; Virginia State Corporation Commission Comments; Florida Public Service Commission Comments; Iowa Utilities Board Comments; Connecticut Department of Public Utility Control Comments; Massachusetts Department of Telecommunications and Energy Comments; Public Service Commission of the District of Columbia Comments. While other state commissions have recommended changes to the Missoula Plan (*see, e.g.,* California Public Utilities Commission Comments; Public Service Commission of Wisconsin Comments; Kansas Corporation Commission Comments; South Carolina Office of Regulatory Staff Comments; Oklahoma Corporation Commission Comments; and the Early Adopter States (Maine, Vermont, and Nebraska)), no state commission supports the Missoula Plan.

set forth in its initial comments. GCI will not restate those arguments here as the ILECs have added nothing to the record to supplement their insubstantial public interest showing. Instead, GCI will only respond to recent revisions and clarifications submitted by the Missoula Plan proponents.

First, the Missoula Plan supporters have expanded the definition of a Track 3 carrier – which originally was limited to the nation's smallest, most rural ILECs – to encompass mid-sized ILECs and rural ILECs affiliated with large parent corporations, including Embarq and ACS. GCI opposes the Missoula Plan's reliance on "tracks," because it is anti-competitive and forecloses the reform of intercarrier compensation in the most rural markets, or markets served by Track 3 carriers. By no means should the Commission extend this deeply flawed framework to larger, less rural ILECs without any explanation for why these carriers should be entitled to the same level of "protection" that is made available to their much smaller and significantly more rural counterparts.

Second, the Missoula Plan supporters have "agreed to disagree" over the legal basis for the new Restructure Mechanism, which compensates ILECs for lost intercarrier compensation revenue on a dollar-for-dollar basis. The Restructure Mechanism can only be characterized as a universal service mechanism subject to section 254 of the Telecommunications Act of 1996 (the "1996 Act"), because that statutory provision is the sole vehicle by which the Commission can raise subsidies from, and redistribute funds to, telecommunications carriers. Further, as a universal service mechanism, the Restructure Mechanism must be fully portable among all Eligible Telecommunications Carriers ("ETCs") – a requirement that is opposed by virtually all of the rural ILECs. There simply is no legal support for the rural ILECs' alternate theory that the Restructure

Mechanism is an access charge replacement mechanism subject to sections 201 and 205, nor is there any basis to place restrictions on its portability among ETCs.

Third, the Missoula Plan proponents seek to classify all competitive carriers, including GCI, as Track 1 carriers, regardless of the markets they serve. Though they provide no support in the record for this aspect of the Missoula Plan, both AT&T and several rural ILECs asserted that this blatantly anti-competitive scheme is in the public interest during a hearing before the Regulatory Commission of Alaska ("RCA"). As a threshold matter, this proposed policy shift violates FCC and RCA precedent, which cap a CLEC's access charges at the rate of the ILEC with which it competes by forcing a CLEC to charge access rates that are significantly lower than the rates charged by the in-market ILEC. More fundamentally, however, this policy imposes a regulatory framework on all competitors based on perceptions of CLECs in the lower 48, which primarily limit service to business customers located in high-density, low cost areas. GCI believes that its regulatory treatment should reflect the fact that it operates in some of the nation's most rural areas, where it has assumed both ETC status and has made carrier of last resort ("COLR") proposals to the state commission in connection with its local service offerings. Thus, for the same reasons that rural ILECs argue that the uniform classification of ILECs would not be in the public interest, there is no valid justification for treating GCI as a Track 1 carrier in Track 2 or Track 3 markets; instead, to the extent that the Commission finds it necessary to adopt an intercarrier compensation reform plan that includes "tracks," GCI should be subject to the same track designation as the ILEC with which it competes.

Finally, the Missoula Plan supporters have claimed that the Missoula Plan reforms the current intercarrier compensation regime, because it unifies rates across jurisdictions (*i.e.*, intrastate versus interstate) and across services (*i.e.*, local versus wireless versus long distance). Nothing could be further from the truth, at least in Track 3 markets. The Missoula Plan is so fraught with loopholes that rates are never unified in Track 3 markets, whether the Commission considers the rates charged by a single Track 3 carrier for different services or between jurisdictions, or whether the Commission considers the rates charged among Track 3 carriers. The bottom line is that the Missoula Plan, though characterized as a reform plan, reforms nothing. To the contrary, in Track 3 markets, it merely perpetuates the same patchwork quilt of intercarrier compensation rates and structures that creates competitive distortions and arbitrage opportunities today.

II. THE RESTRUCTURE MECHANISM IS A UNIVERSAL SERVICE MECHANISM, NOT AN ACCESS CHARGE REPLACEMENT MECHANISM

As GCI explained in its initial comments, the Missoula Plan's new Restructure Mechanism – which compensates ILECs for reductions in their revenues from interstate access, intrastate access, and reciprocal compensation, to the extent that such revenues are not recovered from restructured intercarrier charges or increased subscriber line charges ("SLCs") – is a new universal service mechanism subject to section 254 of the 1996 Act.[9] Other parties agree with GCI,[10] including some of the Missoula Plan supporters.[11] As GCI expected, however, the rural ILECs contend the Restructure Mechanism is an access charge replacement mechanism subject to sections 201 and 205

[9] GCI Comments at 48-51.

[10] *See* CTIA Comments at 36-37.

[11] *See* Missoula Plan Supporters' Comments at Attachment C.

in an attempt to evade the Commission's long-standing rule that universal service support must be portable among all ETCs.[12]

The rural ILECs' assertion that the Restructure Mechanism is an access charge mechanism, and not a universal service mechanism, is inconsistent with Commission precedent. In both the *CALLS* and the *MAG* Orders,[13] the Commission recognized that its "interstate access charge structure also provided LECs with implicit universal service support," and established explicit universal service mechanisms to replace the implicit subsidies previously provided through access charge revenue. In the *MAG Order,* however, the Commission decided to proceed more cautiously in reforming universal service and access charges for the smaller, rate-of-return carriers, in recognition of the smaller ILECs' greater reliance on access charges.[14] In other words, the Commission adopted an interim solution that only moved revenue that rate-of-return ILECs once recovered from the Carrier Common Line Charge to a new interstate universal service mechanism; it did not claim to wholly eliminate universal service subsidies. Thus, while the subsidies embedded in interstate access charges have been reduced, they have not been eliminated altogether, particularly for rural, rate-of-return ILECs.

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[12] *See, e.g.,* Missoula Plan Supporters' Comments at Attachment B; TDS Telecommunications Corp. Comments at 3-6; Small Company Committee of the Louisiana Telecommunications Association Comments at 5-7; Minnesota Independent Coalition Comments at 7-9.

[13] *See Access Charge Reform,* Sixth Report and Order, 15 FCC Rcd. 12962, 12971, 13040-41 (2002) ("*CALLS Order*"); *see also Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers,* Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 19613 (¶ 23) (2001) ("*MAG Order*").

[14] *MAG Order* at 19620.

Further, these reforms to *interstate* access charges are only one-half of the equation. The Restructure Mechanism compensates ILECs for lost revenue from both interstate *and* intrastate access. There can be little doubt that significant universal service subsidies are embedded in intrastate access charge rates today. After all, if there were no implicit subsidies in intrastate access charges, there would be no need to create the Early Adopter Fund, which provides additional support for states that have reduced intrastate access charges and moved the implicit subsidies embedded therein to an explicit universal service fund. There is no question that substantial implicit subsidies remain in intrastate access charges, and these subsidies constitute universal service. To the extent that the Commission removes implicit subsidies from interstate and intrastate access charges, and allows these subsidies to be recovered through an explicit new funding mechanism, that mechanism is a universal service mechanism, consistent with Commission precedent.

If the Restructure Mechanism is not a universal service mechanism, there is no reason to compensate ILECs for intercarrier compensation revenue reductions on a dollar for dollar basis.[15] The hypocrisy of the rural ILECs' argument is made clear by their justification of the Missoula Plan's policy of revenue neutrality, as effectuated through the Restructure Mechanism, on the grounds that it is needed to achieve the universal service goals in the 1996 Act. The Minnesota Independent Coalition, for example, asserts that the Missoula Plan would be "unworkable" without the Restructure Mechanism, because "increases in end-user charges sufficient to offset reductions in

[15] Although the Restructure Mechanism is, in fact, a universal service mechanism, GCI does not believe that its fundamental purpose – which is to guarantee revenue neutrality for the ILECs – is necessary to achieve the universal service goals embodied in section 254 of the 1996 Act. *See* GCI Comments at 51-67.

intercarrier compensation would not be affordable."[16] Affordability, however, is a universal service goal, as enumerated in section 254(b)(1); it is not one of the requirements of sections 201 or 205. Other rural ILECs argue that the Restructure Mechanism is "essential to the maintenance and upgrading of networks in rural areas and the provisioning of universally available basic and advanced services…."[17] But access to advanced services, like affordability, is a universal service goal in section 254(b)(2). It is absurd for the rural ILECs to argue for the creation of the Restructure Mechanism on universal service grounds, but then argue that it is not a universal service mechanism subject to section 254.

The real reason the rural ILECs seek to characterize the Restructure Mechanism as an access charge replacement mechanism subject to sections 201 and 205, and not a universal service mechanism subject to section 254, is to prevent competitive ETCs – and wireless ETCs, in particular – from drawing from it. This is based on the rural ILECs' misguided notion that only ILECs should get universal service support, despite the fact that Congress envisioned that multiple carriers should be allowed to receive support when it enacted section 214(e) of the 1996 Act. NTCA, for example, recycles the same arguments it has made time and time again for limiting the amount of universal support received by competitive ETCs, *e.g.*, competitive ETCs have a lower cost structure than rural ILECs, they do not face the same regulatory obligations (*i.e.*, Carrier of Last

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[16] *See* Minnesota Independent Coalition Comments at 5; *see also* United States Telecom Association Comments at 14 ("Many USTelecom member companies could not reasonably recover lost access charge revenue solely by increasing end user rates because such rates simply would not be perceived as affordable."); OPASTCO Comments at 7.

[17] Rural ILECs' Comments at 3; *see also* OPASTCO Comments at 6-7.

Resort), and providing support to competitive ETCs will cause the USF to balloon.[18] Not only does the NTCA argument in defense of its access charge claim fly in the face of the statute itself, but all of the collective rural ILECs arguments for prohibiting portability are based on universal service concerns. In making these arguments, the rural ILECs effectively concede that the Restructure Mechanism is, in fact, a universal service mechanism.

The rural ILECs' argument that the Restructure Mechanism could be implemented pursuant to sections 201 and 205 also falls short because those statutory provisions provide the Commission with no legal authority to raise subsidies. Section 254(b)(4) requires all carriers to make "equitable and nondiscriminatory contribution[s]" to universal service, and section 254(d) is the only provision of the 1996 Act that allows the Commission to collect money from all telecommunications carriers and redistribute those funds to others. That is precisely what the rural ILECs would have the Commission do under sections 201 and 205, however. There is no legal basis for this argument.

The rural ILECs try to find support in *MTS and WATS Market Structure Order*,[19] which established pooled access and end-user charges under sections 201 and 205. This Order does not assist the rural ILECs' collection problem, for the following reason. The *MTS and WATS Market Structure Order* only established charges that could be assessed against interexchange carriers ("IXCs") that interconnected with NECA carriers. In other words, the NECA carrier provided the IXC with a service (*i.e.*, originating or terminating access) through its tariff for which it could charge the IXC, and the NECA carrier could

[18] NTCA Comments at 10-14; *see also* United States Telecom Association Comments at 16.

[19] *MTS and WATS Market Structure*, Third Report and Order, 93 FCC2d 241 (¶¶ 42, 209) (1983).

recover its "costs" from the pool. The rural ILECs would seemingly have the Commission use the same authority to assess a charge against *any* carrier, whether that carrier interconnects with a rural ILEC or not. This proposal is not supported by section 201, which only allows the Commission to "establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes." Likewise, pursuant to section 205, the Commission only has authority "to determine and prescribe what will be the just and reasonable charge for interconnection services it requires pursuant to Section 201." In other words, the Commission's authority under sections 201 and 205 is limited to establishing the conditions of, and the charges for, *interconnection*. Where there is no interconnection, the Commission lacks authority to do anything under sections 201 and 205.

Indeed, if TDS is correct, and the purpose of the Restructure Mechanism is "to compensate a carrier for using its facilities to originate and terminate traffic for other carriers," then there is no basis under sections 201 or 205 to assess Restructure Mechanism contributions against carriers that are not using these interconnection-based services.[20] Section 254(d), by contrast, provides the Commission with the authority to collect universal service contributions from all telecommunications carriers, regardless of interconnection. Thus, unless the Commission establishes the Restructure Mechanism as a universal service mechanism subject to section 254, there is no legal basis for the Restructure Mechanism to "be funded broadly by all users of the public

[20] TDS Telecommunications Corp. Comments at 6.

telecommunications infrastructure,"[21] or "all broadband Internet access providers,"[22] given that many of these service providers do not interconnect with rural ILECs.

NTCA implicitly realizes that its argument is untenable, and therefore would only assess the Restructure Mechanism against those carriers that traditionally paid access charges, *i.e.*, IXCs, wireless carriers, and VoIP providers.[23] This demonstrates the significant limitations of the argument. The purported benefit of the Missoula Plan is that it unifies and *reduces* intercarrier compensation rates. After all, one of the offsetting benefits of increased SLCs – from the consumer's perspective – is reduced long distance rates. If, however, a rural ILEC reduces its interstate and intrastate access charge rates under the Missoula Plan, but then charges an IXC a "new" access element through its tariffs that allows the ILEC to recover its lost access charge revenues, where is the intercarrier compensation reform? The IXC, in effect, is paying the same rates that it did before – the only thing that potentially changes is the structure or name of the charge. As a result, there is no reform.

In fact, designating the Restructure Mechanism as an access charge replacement mechanism under sections 201 and 205 would have perverse effects. Rural ILECs would be allowed to charge higher intercarrier compensation rates to carriers that cannot avoid them, and lower rates (subsidized through the Restructure Mechanism) to carriers that can avoid them through other competitive strategies. This is an anti-competitive result,

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[21] United States Telecom Association Comments at 15; *see also* OPASTCO Comments at 9-10.

[22] OPASTCO Comments at 10.

[23] NTCA Comments at 7.

and it perpetuates the incentives for arbitrage that are embedded in the existing intercarrier compensation regime.

Of course, even if the Restructure Mechanism were an access charge replacement mechanism under sections 201 and 205, that does not mean that only ILECs would be entitled to recover their costs from it. It is well established that rates established pursuant to section 201 must be cost-based.[24] To the extent that a rural ILEC incurs costs when it provides IXCs, wireless carriers, and VoIP providers the ability to originate and terminate calls on its network, so will a wireline CLEC such as GCI. To the extent that a CLEC incurs similar costs, it must be able to charge a similar rate under section 201. This is wholly consistent with the *CLEC Access Charge Reform Order,* wherein the Commission not only affirmed a CLEC's ability to assess access charges pursuant to section 201, it allowed the CLEC to charge rates up to the level of the rates charged by the ILEC.[25] In essence, where the Commission has found that the CLEC and the ILEC are performing the same functions in the same market, it allows them to charge the same rates. It follows that if a CLEC faces a reduction in those rates, it should also be able to draw from an access charge replacement mechanism established under section 201, to the same extent as the ILEC.[26]

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[24] *See Access Charge Reform,* Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd. 16,606, 16619 (1997), *citing CompTel v. FCC,* 87 F.3d 522, 529 (D.C. Cir. 1996) ("the just and reasonable rates required by Sections 201 and 202 of the Communications Act must ordinarily be cost-based, absent a clear explanation of the Commission's reasons for a departure from cost-based ratemaking.").

[25] *Access Charge Reform,* Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9924 (2001) ("*CLEC Access Charge Reform Order*").

[26] GCI acknowledges that several rural ILECs concede that an access charge replacement mechanism subject to sections 201 and 205 must be available to any carrier that loses access charge revenue as a result of the rate reductions imposed by the Missoula Plan. *See, e.g.,* NTCA Comments at 9; OPASTCO Comments at 7; TDS Telecommunications

GCI therefore agrees in concept with those Missoula Plan supporters that assert the Restructure Mechanism is a universal service mechanism subject to section 254. GCI does not agree with these Missoula Plan supporters about how the Restructure Mechanism should be made portable among ETCs. Under the Commission's existing rules, all competitive ETCs receive the same per-line support as the ILEC with which it competes when it captures a line.[27] The Missoula Plan supporters would limit the scope of this requirement in two important respects:

1. Wireline ETCs serving Track 1, 2, and 3 markets, and wireless ETCs serving Track 1 markets, would be eligible for disbursements from the Restructure Mechanism, but wireless ETCs serving Track 2 and Track 3 markets would not.[28]

2. ETCs competing against price-cap ILECs in Tracks 1, 2, or 3 would be eligible to receive the same level of support as the ILEC, while ETCs competing against rate-of-return ILECs would receive Restructure Mechanism disbursements that are equivalent to those of the ILEC, but the amounts of the disbursements would not include amounts attributable to ILEC line loss.[29]

The first limitation violates the Commission's long-standing commitment to technological neutrality by prohibiting wireless ETCs from receiving universal service support disbursements in Track 2 and Track 3 markets.[30] But as the Commission

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Corp. Comments at 6-7; Minnesota Independent Coalition Comments at 6. Neither the Missoula Plan, as originally filed, nor the revisions filed on October 25, 2006 by the Missoula Plan supporters acknowledge this point, however.

[27] *In the Matter of Federal-State Joint Board on Universal Service,* First Report and Order, 12 FCC Rcd. 8776, 8932 (1997) ("*Universal Service First Report and Order*"); 47 C.F.R. § 54.307(a).

[28] The Missoula Plan supporters refer to these carriers as "Track 2 and 3 wireless ETCs." Missoula Plan Supporters' Comments, Appendix B at 3. Per the Missoula Plan, however, all wireless carriers are classified as Track 1 carriers. GCI believes that the Missoula Plan supporters were referring to wireless carriers that compete in Track 2 and Track 3 markets.

[29] *Id.*

[30] *Universal Service First Report and Order* at 8802.

explained in the *Universal Service First Report and Order*, technological neutrality is a key principle, as it "avoid[s] limiting providers of universal service to modes of delivering that service that are obsolete or not cost effective."[31] GCI currently is a wireline ETC in Track 2 and Track 3 markets in Alaska, so this limitation would not affect GCI's access to universal service support today. However, as an ETC, GCI may provide the supported universal services over new network facilities in the future, including a wireless network, where such a network may be more cost-effective and better capable of serving rural customers. This restriction forecloses such a transition by GCI or any other carrier serving rural markets. Notably, the Missoula Plan supporters offer no support for this departure from the Commission's core universal service principles or an explanation of how rural consumers would benefit if they are limited to universal service provided over wireline networks.

Likewise, the second limitation violates the Commission's commitment to competitive neutrality, as it provides rate-of-return ILECs with more per-line support than competitive ETCs. Under the Missoula Plan, Restructure Mechanism support is provided on a lump-sum basis. As such, rate-of-return carriers retain all of their Restructure Mechanism support, even when they lose a line to a competitor. Hence, as the rate-of-return ILEC loses lines, its effective per-line support increases as the total amount of support it receives is divided across fewer lines.[32] In its comments, GCI urged the Commission to reject this approach, because it rewards rate-of-return ILECs for sitting idle, undercuts the strong incentives to increase efficiency and improve quality of

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[31] *Id.*

[32] GCI Comments at 54-55.

service that exist in competitive markets, and creates an upward spiral of support.[33] Instead, any new universal service mechanism should be distributed to all ETCs on a per-line basis, so as a carrier loses a line, it loses the universal service support associated with that line. But if the rate-of-return ILECs continue to demand that they be "made whole" through the Restructure Mechanism, the only means to do so that is consistent with the principle of competitive neutrality is to provide competitive ETCs with the same per-line support as the ILEC, even if that amount increases as the ILEC loses lines. As the Commission has recognized, an unequal subsidy cannot be competitively neutral and will skew the market in favor of one competitor – the ILEC.[34]

Finally, GCI finds it to be wholly inappropriate (though unsurprising) that the Missoula Plan supporters have proposed the creation of a new universal service mechanism that is structured in a manner that is in direct conflict with the Commission's existing universal service policies. To the extent that the Missoula Plan supporters seek to limit the universal service support received by wireless ETCs, or reduce the amount of support received by wireline ETCs in rural markets, they should pursue those changes to the universal service regime in the Commission's ongoing universal service proceeding. The Missoula Plan should not serve as a vehicle to allow rural ILECs to make a collateral attack on longstanding Commission policies with which they disagree, especially given that the Missoula Plan supporters have not demonstrated why these significant changes

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[33] *Id.* at 86-87.

[34] *See Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934,* Memorandum and Order, 15 FCC Rcd. 16227, 16231 (2000).

are required under the Missoula Plan, but not the Commission's larger universal service framework.

III. IT IS NOT IN THE PUBLIC INTEREST TO RECLASSIFY THE AFFILIATES OF MID-SIZED ILECS AS TRACK 3 CARRIERS

The Missoula Plan as originally filed classified most mid-sized ILECs and their affiliates as "Track 2 carriers." Of particular note was the fact that rural, rate-of-return ILEC study areas with more than 10,000 loops were assigned to Track 2, "provided that the study areas are held by a carrier or parent company that also holds price-cap or non-rural study areas."[35] As GCI explained in its original comments, GCI opposes the Missoula Plan's reliance on "tracks" because it perpetuates arbitrary distinctions among carriers that preclude true intercarrier compensation reform, particularly in rural markets served by Track 3 carriers. The "revised" Missoula Plan makes this distinction even worse by expanding the definition of a Track 3 carrier to encompass additional ILECs, including those that are affiliated with larger, non-rural parent companies. According to the "revised" Missoula Plan,

> The definition of a Track 3 carrier is revised such that a carrier is a Track 3 carrier in a particular study area if, in that study area as of August 1, 2006: (1) the carrier was an ILEC, (2) it met the definition of "Rural Telephone Company" in section 3(37) of the Communications Act (47 U.S.C. § 153(37)), (4) it operated under interstate rate of return regulation, and (4) it was not owned by a BOC or its affiliate.[36]

The problem with the expansion of the Track 3 category is that it allows almost all rural ILECs – even those that can take advantage of substantial resources provided by a large, affiliated parent company – to take advantage of regulatory policies designed to benefit much smaller carriers. This re-designation leads to patently absurd results. Embarq

[35] Missoula Plan at 7.

[36] Missoula Plan Supporters' Comments, Attachment A at 2.

serves roughly the same number of lines as the cable industry (7 million), yet it would receive the same preferential treatment as the nation's smallest, most rural ILECs. It therefore is no surprise that Embarq now supports the Missoula Plan. The same outcome occurs in Alaska, where each of ACS' operating subsidiaries except ACS of Anchorage would be reclassified as a Track 3 carrier. This revision reinforces GCI's argument that the Missoula Plan primarily benefits ILECs, to the detriment of competitors and consumers alike. The Missoula Plan proponents, through their revisions, have merely expanded the scope of the benefits conferred by the plan to a larger group of ILECs in order to attract new supporters.

As background, the organization of many rural ILECs is not "natural" – rather, it is a unique outgrowth of the regulatory environment. Thus, it should not be a determinative factor in an ILEC's classification under any intercarrier compensation reform plan. For example, ACS's regulatory status results from the fact it acquired several independent telephone companies in Alaska, including the companies serving Anchorage, Fairbanks, and Juneau, Alaska's three largest cities.[37] ACS elected to maintain each as a stand-alone legal entity, rather than combining these newly acquired operations into a single company. As a result, each entity except ACS of Anchorage is a "rural telephone company" under section 153(37) of the 1996 Act. In reality, however, the legal status of ACS's various subsidiaries does not reflect the fact that they are not

[37] ACS acquired Anchorage Telephone Utility, the non-rural municipally-owned ILEC serving the Anchorage market (now ACS of Anchorage, Inc.); Telephone Utilities of Alaska, Inc., the ILEC in Juneau (now ACS of Alaska, Inc.); PTI Communications, Inc., the ILEC in downtown Fairbanks (now ACS of Fairbanks, Inc.); and Telephone Utilities of the Northland, Inc., the ILEC serving the suburbs of Fairbanks and other, smaller areas of the state (now ACS of the Northland, Inc.).

stand-alone operating entities. These subsidiaries share, among other things, marketing and sales, finance and accounting, customer interaction, human resources, legal/regulatory, network management, procurements, etc. that are provided by their corporate parent. In short, each operating subsidiary benefits from enterprise-wide economies of scale and scope that are not available to smaller, more rural independent ILECs.

ACS of Fairbanks's network architecture reinforces this fact. In the greater Fairbanks region, ACS serves the market through three different ILEC subsidiaries operating in three different study areas. Downtown Fairbanks is in one study area. Two neighboring areas, Fort Wainwright and Eielson Air Force Base, are part of another study area (ACS of Alaska) that includes Juneau, which is in a different region of the state, 600 miles away. Another part of the greater Fairbanks region, the North Pole area, is in a third study area (ACS of the Northland) that encompasses more remote, non-contiguous Alaska villages. ACS, however, is serving, or has proposed to serve, all of these areas as a single network with a host/remote arrangement served from a switch in downtown Fairbanks, while nonetheless retaining the same three separate telephone company service areas.

If ACS combined its operating subsidiaries in Alaska, it would be a non-rural ILEC, serving more than 330,000 access lines – the fourth largest rate-of-return ILEC in the nation. Clearly, it does not make sense to confer the preferential treatment accorded Track 3 carriers on any ACS operating subsidiary, particularly given that each subsidiary benefits from enterprise-wide economies of scale and scope, and in some circumstances, serves its customers using a single network owned by the ACS parent. The Missoula

Plan, as originally filed, recognized this fact, and classified each ACS operating subsidiary as a Track 2 carrier.

To the extent the Commission finds it necessary to impose an intercarrier compensation reform plan with “tracks” – an approach that GCI vehemently opposes – the Commission should retain the classification system proposed by the original Missoula Plan so all of ACS should be included in Track 2. Holding otherwise leads to absurd results. ACS of Fairbanks and ACS of Juneau, which serve Alaska's second- and third-largest cities, respectively, will be subject to regulatory requirements imposed on the nation's most rural carriers. This outcome is not in the public interest. As GCI explained in its initial comments, the regulatory framework for Track 3 carriers never reforms intercarrier compensation and universal service; instead, it perpetuates arbitrary and anti-competitive distinctions embedded in the existing regime to protect the revenues of rural, rate-of-return ILECs. The Missoula Plan “revisions” extend this deeply flawed framework to larger, less rural ILECs without any explanation for why these carriers should be entitled to the same level of “protection” that is made available to their much smaller, and significantly more rural counterparts.

IV. COMPETITIVE CARRIERS SHOULD NOT BE CLASSIFIED AS TRACK 1 CARRIERS, IRRESPECTIVE OF THE MARKETS THEY SERVE

GCI opposes the Missoula Plan’s reliance on “tracks” because it perpetuates arbitrary distinctions that foreclose the emergence of competitive markets. The Missoula Plan, most notably, does not make any attempt to achieve intercarrier compensation reform in Track 3 markets. In these markets, Track 3 carriers are allowed to preserve separate reciprocal compensation and access charge rates, instead of transitioning to uniform originating and terminating rates, like Track 1 and Track 2 carriers. Likewise, Track 3 carriers are never required to reduce their intercarrier compensation rates. Instead, their interstate access charges remain at existing levels – levels that are far above the rates charged by Track 1 and Track 2 carriers – and their reciprocal compensation rates are allowed to rise to the same level over time.

Beyond constituting bad public policy, the Missoula Plan's reliance on "tracks" is profoundly anticompetitive, because it establishes different intercarrier compensation rate levels and structures for wireline carriers providing the same services in the same market. Under the Missoula Plan, all of the ILECs with which GCI competes in Alaska will be designated as Track 3 carriers, with the exception of ACS of Anchorage, which will be classified as a Track 2 carrier. GCI, by contrast, will be classified as a Track 1 carrier, and therefore will face the same regulatory obligations as the Regional Bell Operating Companies ("RBOCs"), wireless companies, and CLECs that primarily serve high-density, low-cost urban areas in the continental United States. The net effect is that in every market where GCI provides service, it will be forced to charge lower, Track 1 rates, while the ILEC is allowed to collect higher Track 2 or Track 3 rates, at least with respect to access charges. This outcome is not competitively neutral and erects a barrier to entry, as the difference in access charge rates serves to keep GCI out of the market by artificially denying it revenues that otherwise would be available. It also is wholly inconsistent with precedents set by the FCC[38] and the RCA,[39] which ensure competitive neutrality by benchmarking a CLEC's access charge rates to the in-market ILEC's rates.

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[38] *CLEC Access Charge Reform Order*, 16 FCC Rcd. at 9924.

[39] *See* Alaska Intrastate Interexchange Access Charge Manual at § 102 (Price Ceilings for Nonpooling LECs).

Significantly, other parties – including state commissions – oppose this aspect of the Missoula Plan on the same grounds. According to the Public Utilities Commission of Ohio, "providers such as Track 1 CLECs will bear a disproportionate revenue shortfall when compared with providers such as Track 2 and Track 3 ILECs. Consequently, CLECs would be put at a competitive disadvantage with competing Track 2 and Track 3 network providers, regardless of the cost recovery method for such a revenue shortfall."[40] Likewise, as the Public Utility Commission of Texas explains,

> CLECs operating in rural areas thus will be subject to different rate requirements … than the incumbent LECs with which they compete. CLECs would pay to the ILEC a higher rate for access traffic than they would be paid by the ILEC for such traffic…. These provisions of the Plan create yet another competitive disadvantage for CLECs providing service in rural areas.[41]

These state commissions hit the nail on the head. The blanket designation of all competitive carriers as Track 1 carriers is blatantly anti-competitive and will foreclose the development of competition in rural markets.

Further, from GCI's perspective, the arbitrary classification of GCI as a Track 1 carrier is baseless given the markets GCI serves and the regulatory obligations GCI has assumed. Any justification for treating GCI differently simply based on its status as a CLEC is not founded on fact, and appears to reflect inapplicable perceptions about CLECs in the lower 48. The vast majority of CLECs serve urban, low-cost markets; GCI, with one exception, only serves rural, high-cost markets in Alaska. Likewise, CLECs in the lower 48 focus their efforts on high-margin business customers; GCI, by contrast, has assumed ETC obligations, which require GCI to provide basic services

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[40] Public Utilities Commission of Ohio Comments at 28.

[41] Public Utility Commission of Texas Comments at 5-6.

study area-wide. And while rural ILECs have cited their responsibility to serve as Carrier of Last Resort as justification for their receipt of preferential treatment under the Missoula Plan, GCI, in addition to its obligation to assume COLR status pursuant to section 214(e)(4), has offered to share COLR obligations where it reaches certain levels of market share and of self-deployed facilities.[42]

Other CLECs that serve rural markets similarly argue that their classification as a Track 1 carrier is inappropriate. According to the South Dakota Rural CLEC Coalition, "[t]reating all CLEC entities the same regardless of the geographic areas actually served without giving some recognition to the different access rates being charged today by CLECs in urban versus rural markets would be unfair and would, in effect, end up penalizing the small rural CLEC entities for the investments they have made."[43] The Rural Independent Competitive Alliance asserts that "[t]he Missoula Plan ignores the important factual differences between urban and rural CLECs," and urges the Commission to "modify the Plan to allow rural CLECs … to follow the rate regulations applicable to Track 3 carriers…."[44] GCI agrees. The Commission should reject the Missoula Plan's overly expansive, "one size fits all approach" for establishing the intercarrier compensation rates and structures for all competitive carriers given that the plan rejected an identical approach for establishing the regulatory treatment of incumbent carriers. And the difference in treatment leads to anticompetitive outcomes.

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[42] *See* GCI Comments, Regulatory Commission of Alaska Docket No. R-03-3 (Jan. 13, 2004); *see also* GCI Comments, Regulatory Commission of Alaska Docket Nos. R-01-2, R-02-6, R-02-7 (Jan. 31, 2003).

[43] South Dakota Rural CLEC Coalition Comments at 9.

[44] Rural Independent Competitive Alliance Comments at 9.

Instead, for the purposes of competitive neutrality, CLECs such as GCI should be subject to the same regulatory treatment as the ILEC in whose market it competes (*i.e.*, Track 2 in Anchorage and Track 3 everywhere else). This classification will have no direct effect on rural ILECs, as it will only impact the access charge rates that the CLEC charges to IXCs and wireless carriers – not the ILECs. It also will have no effect on universal service, as CLECs are not permitted to draw from the new Restructure Mechanism as currently formulated. Even if this gross inequity were resolved and CLECs were able to draw funds to offset their intercarrier compensation revenue reductions, the CLEC would actually draw less Restructure Mechanism support, to the extent that its access charge rates were pegged at the rates of the ILECs and not set at lower Track 1 levels. Hence, the ILECs' opposition to a system in which all carriers are classified by the market they serve has nothing to do with intercarrier compensation reform or the preservation of universal service; to the contrary, the sole purpose of retaining the arbitrary categorization of CLECs such as GCI as a Track 1 carriers is to place them at a competitive disadvantage relative to the ILECs in an attempt to keep competitors out of the market.

V. THE MISSOULA PLAN NEVER ACHIEVES UNIFORM RATES IN TRACK 3 MARKETS

The Missoula Plan supporters urge the Commission to adopt the Missoula Plan because it purports to implement a "comprehensive solution to intercarrier compensation" which, among other alleged achievements, "unifies intercarrier charges for the majority of the nation's access lines and moves all intercarrier rates for all traffic closer together."[45] This statement includes an important caveat: the Missoula Plan only unifies rates in markets served by large and mid-sized ILECs (*i.e.*, Track 1 and Track 2 carriers). Significant rate discrepancies remain in markets served by Track 3 carriers, which include almost all of Alaska. Hence, there is no basis for the Missoula Plan supporters' assertion that "[b]y merging the rates between regulatory jurisdictions and between service types (*e.g.*, wireline vs. wireless, interstate vs. intrastate, and VoIP vs. circuit switched telephony), the Missoula Plan will minimize arbitrage opportunities and competitive distortions, facilitate the provision of bundled all-you-can-eat services and increased local calling areas, and productively focus carriers' attention on competing to sell consumers better and cheaper services rather than on exploiting or closing regulatory loopholes."[46] GCI agrees that these significant benefits could be achieved if rates were unified in *all* markets, including Track 3 markets. But under the Missoula Plan, they are not. That fact that the Missoula Plan makes no attempt to confer these benefits to consumers in rural markets provides grounds for rejecting the plan outright.

Track 3 intercarrier compensation rates are never unified under the Missoula Plan, in two important respects. First, the rates charged by any given Track 3 carrier differ between jurisdictions (*i.e.*, interstate versus intrastate) and between services (*e.g.*, wireline long distance versus wireless). While the Missoula Plan purports to eventually unify a Track 3 carrier's intrastate access rates, interstate access rates, and reciprocal compensation rates by capping these rates at the level of the Track 3 carrier's interstate access rates, it is likely that this will never happen based on a number of exceptions built into the plan.

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[45] Missoula Plan Supporters' Comments at 6.

[46] *Id.* at 12.

With regard to intrastate access charges, both originating and terminating charges only are reduced in Track 3 markets if a state commission opts into the plan. If a state does not, a Track 3 carrier is permitted to retain intrastate access charge rates that exceed the level of its interstate rates, which is the status quo in Alaska.[47] The converse also is true: if a carrier is charging intrastate access rates that are lower than its interstate rates, it may continue to charge those rates, with no mandate to lower and unify its interstate rate.[48] The net effect is that the Missoula Plan perpetuates significant discrepancies among interstate and intrastate rates.

In addition, the Missoula Plan allows Track 3 carriers to charge different rates for different services. Track 3 carriers may continue to charge existing reciprocal compensation rates under the plan if those rates are lower than their interstate access rates. [49] Similarly, if the Track 3 carrier had been subject to a state-determined reciprocal compensation rate of "zero," it may begin charging reciprocal compensation rates at levels that are not equal either to intrastate or interstate access charge rates.[50] For the vast majority of Track 3 carriers, the reciprocal compensation rates charged for "local" traffic will remain at much lower levels than the access charge rates for "long distance" traffic.

Thus, while the Missoula Plan supporters have filed a graph showing a uniform rate of $.0171 per minute for interstate access, intrastate access, local, and wireless traffic in Track 3 markets, it is highly unlikely that there ever will be a perfect confluence of

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[47] Missoula Plan at 3.

[48] *Id.* at 18.

[49] *Id.* at 18-19.

[50] *Id.* at 19.

events that will lead to such an outcome.[51] Instead, an accurate graph would show intrastate access charge rates that may or may not be higher than the corresponding interstate access charge rates, and reciprocal compensation rates for local and wireless traffic that are lower than both interstate and intrastate access. Indeed, the more likely outcome is reflected in the previous chart, which illustrates how the "current intercarrier compensation system is broken."[52] The Missoula Plan fixes very little, if anything, in Track 3 markets. Time Warner Telecom aptly summarizes the effect of the Missoula Plan: "Track 3 carriers are apparently free in certain (possibly many) circumstances to charge three different rates (*i.e.*, interstate access, intrastate access, and reciprocal compensation) for the same terminating function depending on the jurisdiction of the traffic. This is exactly the situation that intercarrier compensation reform should *prevent*."[53] GCI agrees, for the following reasons.

As an initial matter, these rate discrepancies are blatantly anticompetitive and favor certain technologies over others. Under the current regime, IXCs such as GCI pay very high intrastate access charges when they originate and terminate calls between ILEC local calling areas. However, while these wireline calls are designated as toll calls for which access charges are due, a wireless carrier can originate the same call as a "local" call and pay lower reciprocal compensation rates to the terminating carrier. This difference in treatment for what is essentially the same call results because the Commission's rules provide that reciprocal compensation applies to any wireless-to-LEC

[51] Missoula Plan Supporters' Comments at 7 (chart stating that "The Missoula Plan Repairs the Broken Intercarrier Compensation System").

[52] *Id.* at 3.

[53] Time Warner Telecom et al. Comments at 4-5.

call (regardless of the network on which the call originates) that originates and terminates within the same MTA.[54] Alaska is a single MTA, and many wireless carriers have established statewide local calling areas, providing "local" service between points that are toll calls on the wireline network. All calls that originate or terminate on wireless networks in the wireless local calling areas are "local" calls for which reciprocal compensation, and not intrastate access, is due. The net result is that IXCs are placed at a significant competitive disadvantage relative to wireless carriers under the current regime. This anticompetitive effect is preserved by the Missoula Plan in two ways. First, the Missoula Plan allows a Track 3 carrier's intrastate access charge rates to remain at higher levels than the ostensibly "unified" rates for interstate access and reciprocal compensation. Second, under the Missoula Plan, a Track 3 carrier's reciprocal compensation rate could be lower than its intrastate access rates.

Further, the lack of uniformity perpetuates incentives for arbitrage, and more specifically, concerns about phantom traffic. As GCI explained in its comments, the easiest solution to the problem of phantom traffic is to immediately eliminate the distinction between reciprocal compensation rates and access charges for all traffic.[55] After all, if there is no difference between the rates for access and non-access traffic (or, for that matter, intrastate access versus interstate access), a carrier will have little incentive to strip signaling information from a call in an attempt to reduce its intercarrier compensation costs. But the rural ILECs adamantly oppose any such reform, and have instead asked the Commission to impose new rules that strengthen signaling

[54] 47 C.F.R. § 51.701(b)(2).

[55] GCI Comments at 21; NCTA Comments at 27; Time Warner, Inc. Comments at 11; CTIA Comments at 38.

requirements, require other carriers to create and exchange expensive call detail records, and implement rigorous new enforcement mechanisms solely so they can preserve the historical rate discrepancies that are at the core of the phantom traffic problem. Preservation of rural ILEC revenues through the retention of the outdated intercarrier compensation regime is not a sound public policy basis for imposing onerous and expensive new reporting and enforcement measures on *all* carriers. Instead, the Commission should eliminate arbitrage opportunities that are embedded in the existing intercarrier compensation regime and perpetuated by the Missoula Plan – including, most notably, the phantom traffic problem – by implementing a uniform, terminating rate for all traffic in all markets, including Track 3 markets.

In addition to the fact that the Missoula Plan does not achieve uniformity in the rates charged by any single Track 3 carrier, it also does not achieve rate uniformity among Track 3 carriers. Again, the Missoula Plan supporters present a chart showing that Track 3 carriers will on average charge a terminating rate of $.0171 per minute for all terminating traffic. This rate is without any basis in reality, however, as there will be wide disparities among the rates actually charged by Track 3 carriers. The National Association of Consumer Advocates ("NASUCA") explained the reason for this fundamental shortcoming of the Missoula Plan:

> Track 3 carriers only have to move intrastate ICC rates to interstate levels for each study area. Thus, the termination rate for Track 3 carriers could vary by study area for each of the over 1100 Track 3 carriers. As a practical matter, because of the NECA access pool, there will be approximately 28 different rates for Track 3 carriers – 8 different rates for the 8 NECA pricing zones, and a different individual study area rate for the approximately 20 Track 3 carriers that are not part of the NECA pool. The 28 different termination rates for Track 3 rates will range from a low of $0.003 per MOU to a high of $0.089 per MOU, over 170 times higher than the Track 1 termination rate.[56]

As GCI explained in its comments, most Alaska ILECs are Track 3 carriers, and most of those carriers participate in the highest zones of the NECA pricing pool. As such, the Missoula Plan's failure to reform the rates charged among Track 3 carriers will force GCI to pay much higher access charge rates in Alaska than IXCs which primarily serve Track 1 and Track 2 markets in the lower 48. This, in turn, exacerbates the strain on GCI and other IXCs serving Alaska as they try to conform to section 254(g), and places the federal commitment to geographic rate averaging and rate integration in jeopardy.[57]

From GCI's perspective, the fundamental problem with the Missoula Plan is that it never actually reforms intercarrier compensation in Track 3 markets, for the reasons described above. The Missoula Plan presumably ignores Track 3 markets based on the convenient but entirely wrong premise that competition cannot reach, and will not benefit, rural areas, so there is no need to address intercarrier compensation reform. "Protecting" Track 3 markets from intercarrier compensation reform really protects the rural ILECs serving those markets, at the expense of rural consumers. As a result of this "company" rather than "consumer" bias, customers in rural markets – and customers in

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[56] NASUCA Comments at 17.

[57] GCI Comments at 23-30.

Alaska, in particular – will pay more, and receive less, than customers in urban markets in the lower 48.

GCI therefore strongly opposes a proposal set forth by several CLECs to address intercarrier compensation reform for rural ILECs in a separate proceeding, because it is based on this same flawed presumption.[58] The Commission would be relying on ill-informed advice – and certainly without any evidentiary value – were it to follow the lead of urban, largely business-market CLECs and set aside for another day intercarrier compensation reform for rural areas. Not only are these head-in-the sand proponents wrong in their approach, but in their haste to appease rural ILECs in the hope of achieving gains in their urban markets, they ignore not only the presence of competitors like GCI that actually serve rural markets,[59] but also the consumers in these areas. It is not only GCI's firm belief, as a competitor in Track 3 markets, but it is also the law that rural *consumers* are to have access to the high-quality telecommunications services at affordable rates that are reasonably comparable to those of their urban counterparts.[60] The only way to achieve this outcome is to develop a national plan for intercarrier compensation reform that includes a uniform, terminating rate for all telecommunications traffic, and to undertake that reform effort in an expeditious fashion. Most importantly, all carriers serving rural markets must be included if such a reform effort is to succeed.

[58] Broadview Networks et al. Comments at 78-80.
[59] It is, after all, easy to argue that intercarrier compensation reform should be undertaken in rural markets at some future date when a carrier does not actually provide service in those markets.

[60] 47 U.S.C. § 254(b).

VI. THE NEW FEDERAL BENCHMARK MECHANISM MAKES AN ALREADY BAD PLAN EVEN WORSE

Late on January 30 – approximately 48 hours before the deadline for filing reply comments on the Missoula Plan – the plan's supporters, along with five state commissions, filed an amendment that would adopt a "federal benchmark mechanism."[61] In essence, the new mechanism would expand the size of the Early Adopter Fund ("EAF") by a factor of four (from approximately $200 million to $800 million) and implement a complicated set of rules that would distribute EAF funds to ILECs based on a state's residential rates, with ILECs receiving more support in states with higher rates.

GCI obviously has not had time to digest the federal benchmark mechanism proposal, which does significantly more than simply amend the Missoula Plan; to the contrary, in effectively implementing a national residential retail rate and dramatically increasing the size of the USF, the federal benchmark mechanism fundamentally changes the nature of the plan itself.[62] Accordingly, GCI urges the FCC to seek comment on the federal benchmark mechanism separately, consistent with its treatment of the Missoula Plan's phantom traffic "solution."

Nonetheless, GCI has two initial reactions to the federal benchmark mechanism. First, the federal benchmark mechanism suffers from the same fundamental shortcoming

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[61] Letter from the Missoula Plan Supporters and the Indiana Utility Regulatory Commission, Maine Public Utilities Commission, Nebraska Public Service Commission, Vermont Department of Public Service, Vermont Public Service Board, and Wyoming Public Service Commission to Marlene Dortch, Federal Communications Commission, CC Docket No. 01-92 (Jan. 30, 2007).

[62] It is puzzling why the Missoula Plan proponents, after securing two separate extensions of the reply comment deadline, would file this significant new proposal a mere two days before reply comments were due. In filing the materials at the last minute, they gave interested parties no time to incorporate any analysis of the federal benchmark mechanism into their reply comments.

as the other "amendments" to the Missoula Plan – its sole purpose is to benefit ILECs. In essence, the new mechanism expands the size of the EAF to $800 million, providing a total of $2.8 million in new universal service funding solely to the ILECs. GCI opposes the use of universal service as piggy bank for the incumbents, at the expense of consumers.

Second, the rationale for the EAF and the new federal benchmark mechanism are antithetical to the universal service goals embodied in section 254 of the 1996 Act. The avowed purpose of the EAF is to compensate states that have reformed intercarrier compensation by reducing intrastate access charges, raising retail rates, creating an intrastate universal service fund, or some combination thereof. GCI questions why the Commission should distribute more universal service funding to states that have addressed their basic universal service responsibilities as some sort of a "reward." Universal service should only be available to those areas that need it,[63] and it should only be used to ensure that rates are affordable and reasonably comparable.[64] There has been no demonstration by the federal benchmark mechanism proponents that an increased Subscriber Line Charge would make rates unaffordable in the Early Adopter states, or that the benchmark itself constitutes the maximum affordable rate; rather, as a matter of equity, some state commissions seek to draw additional federal universal service contributions from those states that have not raised rates or established a state universal service fund. From GCI's perspective, disagreements among the state commissions about how to regulate within their borders should not force consumers to contribute an additional $800 million to universal service. In fact, as the courts have recognized,

[63] 47 U.S.C. § 254(b)(3).

[64] 47 U.S.C. § 254(b)(1).

"excess subsidization in some cases may detract from universal service by causing rates to unnecessarily rise, thereby pricing some consumers out of the market."[65] In this important respect, the federal benchmark proposal, as proposed by the Early Adopters, could actually harm universal service to the extent that it increases the size of the already bloated USF. Thus, from GCI's perspective, a better approach is for the Commission to force the ILECs to raise their rates for the supported universal services to a true affordability benchmark – and not a negotiated rate, like $25 – as a prerequisite for drawing federal universal service support, with no USF "bonus" awarded to states in which this action is undertaken.[66]

VII. CONCLUSION

Based on the foregoing, the Commission should reject the Missoula Plan and adopt real intercarrier compensation reform, consistent with the proposals set forth in GCI's initial comments.

Respectfully submitted,

/s/

Tina Pidgeon
Vice-President –
Federal Regulatory Affairs
Maureen Flood
Federal Regulatory Attorney
General Communication, Inc.
1130 17th Street, N.W., Suite 312
Washington, D.C. 20036
(202) 457-8814
(202) 457-8816 FAX

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[65] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

[66] GCI Comments at 67-73.