Before the
Federal Communication Commission
Washington, D.C. 20554

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

COMMENTS OF MID-RIVERS TELEPHONE COOPERATIVE, INC. REGARDING THE PROPOSED FEDERAL BENCHMARK MECHANISM OF THE MISSOULA PLAN FOR INTERCARRIER COMPENSATION REFORM

Mid-Rivers Telephone Cooperative, Inc. (MRC), hereby files its comments in connection with the Commission's proceeding on the Missoula Plan (Plan) for Intercarrier Compensation Reform regarding the proposed Federal Benchmark Mechanism (FBM).

Summary

MRC is concerned that the proposed FBM is poorly defined, overreaching, and harmful to competition.

MRC must again reemphasize its concern regarding the lack of detail and clarity in the Missoula Plan and now the FBM. In its original comments MRC expressed its concern regarding the absence of rules and procedures for the computation and distribution of the Restructure Mechanism (RM) amounts for rural facility based CLECs. The proposed FBM simply ignores the existence of Competitive Local Exchange Carriers (CLECs).

The FBM supporters are requesting that the Commission reach deep into intrastate ratemaking and local rates according to arbitrary and capricious standards that have no support in cost or fact. The FBM would set local rates without regard to many of the factors that are critical to local ratemaking and that have traditionally been considered by state regulatory bodies in local ratemaking proceedings.

Finally, the FBM diminishes the levels of competition in the industry by reducing the competitive differential in local rates, establishing a new federally funded implicit subsidy system, and limiting a LEC's ability to react to competitive threats.

The Commission should reject the FBM in its entirety for these reasons.

The FBM is Incomplete

As with many other aspects of the Missoula Plan, the FBM proposal is incomplete. There are many unspecified parameters and missing details in the plan as proposed. For example, it is not clear how the plan applies to CLECs or if the plan's end user adjustments are required for CLECs or encouraged through a reduction of the RM.

Assumptions

The FBM is so poorly defined with so many gaps and undefined parameters that it is difficult to comment without making assumptions to fill the voids. The comment and reply comment process is rendered ineffective because of this. The commission should reject the FBM plan because of its lack of substance and establish another comment and reply comment cycle once a complete plan is submitted for consideration.

In case the Commission should choose not to reject the FBM at this time, MRC has made the following assumptions in order to express its concerns.

1. Restructure Mechanism (RM) payments are available to CLECs.
2. CLEC RM is computed in a manner similar to ILECs.
3. The RM is not portable and is computed with an individual company's data, not its competitor's data.
4. The proposed end user charges are mandated for ILECs but optional for CLECs.

Should these assumptions prove to be incorrect, MRC would need another opportunity to submit comments, once the plan is better defined.

The FBM Cannot be Adopted as Filed.

Because the FBM is incomplete, it cannot be adopted as filed, and it requires further work by the Commission to fill the gaps left by its developers. Indeed, as stated above the Commission should require that the FBM be resubmitted as a complete plan so that a proper comment cycle can be established.

It is essential that the Commission establish the necessary policy and rules that will govern the distribution of RM amounts to rural facility based CLECs before the Missoula Plan or the FBM are adopted. The Missoula Plan and the FBM are unacceptable to MRC without these needed rules and procedures.

The FBM is beyond the Scope of this Proceeding

The Missoula Plan was originally stated to be a plan to develop a unified intercarrier compensation regime. The FBM will transform this proceeding into an intrastate rate making procedure. This is inappropriate and beyond the scope of this proceeding.

To properly adopt the FBM plan and its proposed intrastate local rate guidelines would require the cooperation of each of the 50 state regulatory agencies and the gathering of data on every individual company. Typically intrastate and local rate decisions include considerations of the calling scope of the exchange, the EAS areas involved, the cost of service, and quality of service. The FBM as proposed considers none of these factors nor does it consider the ability of large companies like Qwest and AT&T to average rates internally.

While it is true that the FBM does not directly affect the local rate, it does affect the total basic monthly amount that a subscriber must pay for local service. In relying on the amount of the other elements included in this basic monthly amount to determine the FBM portion, the FBM effectively sets the total basic monthly amount that a subscriber must pay. The end user choosing service among competing offerings is not concerned with the arcane labels on the individual charges, only the basic flat amount that must be paid for local service.

<u>The FBM Calls for Preemption of Intrastate Regulatory Authority.</u>

The plan sponsors are asking that the Commission assert control or at the minimum a very strong influence over local rates.

The FBM plan provides for three Categories of funding (Categories A, B, and C) to reduce local rates and a low rate adjustment to raise local rates. Although the plan states that funding is provided to states, the funding is computed on a company and exchange basis except for Category C funding and under some circumstances Category B funding. The FBM also requires that the funding flow to the individual company. Rate increases for the low rate adjustment apply directly to the individual company as well. The FBM is clearly local ratemaking.

As with AT&T's call to treat the RM as USF[1], the FCC is again being asked to address the intrastate rate plan of each state and each LEC in a piecemeal fashion and without a sufficient record of the facts to make such a far reaching determination. The problems associated with this were discussed in MRC's Missoula reply comments, and the same arguments would apply here. First, the implicit urban to rural subsidies that are available to large ILECs and are not available to rural ILECs and CLECs are still not addressed. Second, the proposed benchmarks are not based on cost of service or any facts at all for that matter. Further, the adoption of uniform federal benchmarks for local service prices without regard to the documented variance in the cost of service between urban and rural areas institutionalizes the implicit subsidies for large companies, including Qwest, with federal funding.

<u>The FBM Imposes Unreasonable Standards on Small Exchanges.</u>

The FBM fails to recognize distinctions in calling scope among local exchanges. The largest exchanges with hundreds of thousands of subscribers within the local calling area

[1] Comments of the Supporters of the Missoula Plan, Attachment C

are treated with the same benchmark standard as the smallest exchanges with only a hundred subscribers in the local calling area.

Because of the calling scope in very small exchanges, local rates must be kept to a minimum so that the additional cost of long distance calling to centers of commerce do not make the overall cost of the service unaffordable or uncompetitive in relation to wireless or VoIP services.

These details can only be properly evaluated at the state regulatory level with the input of the local company and its customers.

The FBM Diminishes Competition

The level of competition fostered by the Commission since 1996 as well as the general ability of wireline carriers to react to competition will both be impaired by the FBM. The FBM establishes arbitrary rates, sets up implicit subsidies, reduces competitive price differentials, and limits a LEC's ability to respond to competition.

The FBM Proposes Arbitrary Federal Benchmarks for Local Intrastate Rates

Effectively, the plan suggests that all local rates shall be between $20 and $25, the low and high benchmarks of the plan. The proposed benchmarks are arbitrary and capricious, and they are not based upon any cost data, comparative rates, or any facts at all.

The FBM supplies additional federal funding to keep local rates at or below the high rate benchmark of $25. It also decreases federal funding to raise or encourage the raising of local rates that are below the low rate benchmark of $20.

The FBM Establishes a Federally Mandated Implicit Subsidy.

The FBM establishes local rate benchmarks without any cost basis or, for that matter, any factual basis whatsoever. The benchmarks do not vary between exchanges to account for the recognized variance in cost between urban and rural areas or between states.

By providing federal funds to LECs in order to maintain the total required payment for local service within these benchmarks based simply upon the local rates that are in effect at the time, the Commission is establishing a federal implicit subsidy. The FBM has no provisions to explicitly make such support available to competitors. The FBM is therefore contrary to the guidelines of the Telecommunications Act.

The FBM Diminishes Competition by Reducing Competitive Pricing Differentials.

The FBM effectively establishes a range for local service prices so that the maximum pricing differential for LECs permissible under federal guidelines is $5.00, the difference between the high and low rate benchmarks. Non-LEC competitors would be free to price outside these boundaries.

An example of the reduced competitive price differential can be found in the Lewistown, Montana exchange. MRC and Qwest are competitors in Lewistown. Qwest's local rate in Lewistown would decrease from \$25.84 to \$25.21. First, the FBM will provide Category A funding to preclude Qwest from implementing any Missoula end user rate that might be required in Lewistown. In addition, the FBM would provide Category B funding to Qwest and require that Qwest decrease the existing Qwest federal SLC charged in Lewistown by \$0.63 since the Qwest local rate is above the high rate benchmark. Category B funding only provides 75% of the of the Qwest rate overage of \$0.84. Therefore, the effective Qwest local rate would decrease by \$0.63. MRC's assumed Lewistown rate is unaffected by the FBM. As a result Qwest gains a competitive advantage of \$0.63 plus the impact of any end user charges imposed upon MRC and its customers by the Missoula Plan and the FBM.

In most of the exchanges in which MRC competes as a CLEC with Qwest, the FBM will require MRC to reduce its draw on the RM through higher imputed Missoula end user charges because its rates are below the Low Rate Benchmark. At the same time, the FBM will limit or eliminate any required increase in the Qwest end user charges through Category A Funding. The Qwest rate will not go above the high rate benchmark or \$25.00 and the MRC-CLEC rate will not be assumed to be below \$20.00.

If MRC competes too well as a CLEC by having rates that are too low, it will be penalized by the FBM. Should the FBM be adopted by the Commission, MRC would be better off to raise its rates to \$20 immediately so that its RM draw will be unaffected by the FBM. It would not only enjoy increased local revenue, but its RM would not be reduced. This absurd incentive would not be overlooked by many in a similar situation.

The FBM Limits LEC Competitive Response to Competition

In many rural areas just as in urban areas, ILECs and CLECs are competing with wireless services and VoIP services. Companies that have kept their rates low for competitive reasons, especially CLECs, would be required or pressured by the FBM to raise local rates in the face of increasing competition. Furthermore, companies faced with competitive challenges would be forced to consider the impact that the FBM would have on its revenues if it elected to reduce rates in order to compete. If rates dropped below the low rate benchmark of \$20 the company's RM would decrease in addition to the reduced local rates.

Wireline carriers will face increased threats from wireless, cable, and ISP based competitors. It is likely that price will be a key differentiator for these competitors. Wireline carriers must be able to respond to competition with price reductions without the fear of additional revenue losses a price reduction would cause in federal support revenues.

Conclusion

The FBM is an incomplete plan with a large number of undefined parameters and unanswered questions. It is so incomplete that it is difficult to provide the Commission with meaningful comments without assumptions to fill the voids.

The FBM asks the Commission to undertake local rate making tasks that are best left to the state regulatory bodies, the individual companies, and the marketplace. In addition, these tasks would require an enormous amount of data gathering and analysis if done properly.

Finally, the FBM is detrimental to competition among wireline carriers and between wireline and other carriers. It sets arbitrary rate benchmarks, reduces competitive price differentials, and interferes with a LEC's ability to compete in the new telecommunications marketplace.

The Commission should promptly reject the FBM in its entirety.

Respectfully submitted,

Mid-Rivers Telephone Cooperative, Inc.

By Gerry Anderson

Gerry Anderson, General Manager
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