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

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

COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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On the Comments:

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I. INTRODUCTION

On January 30, 2007, the Missoula Plan Supporters and five State Commissions filed an amendment to the intercarrier compensation reform plan (the "Missoula Plan" or "Plan"), which they refer to as the Federal Benchmark Mechanism ("Mechanism"), with the Federal Communications Commission ("FCC" or "Commission").[1] The New Jersey Division of Rate Counsel ("Rate Counsel") submits these comments in response to the public notice issued by the Commission seeking comments regarding the Mechanism.[2]

A. INTEREST OF THE RATEPAYER ADVOCATE IN THE INSTANT PROCEEDING.

The Rate Counsel Has a Distinct Interest in this Proceeding.

The Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.[3] The Rate Counsel participates actively in relevant Federal and

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[1] / *See* Letter from Peter Bluhm, Esq., Vermont Public Service Board; Christopher Campbell, Telecommunications Director, Vermont Department of Public Service; Steve Furtney, Chairman, Wyoming Public Service Commission; Angela DuVall Melton, Esq., Nebraska Public Service Commission; Joel Shifman, Esq., Maine Public Utilities Commission; Joseph Sutherland, Executive Director, Indiana State Regulatory Commission; and the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, January 30, 2007 ("Ex Parte Letter"). This filing was corrected by a subsequent filing on February 5, 2007. *See* Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, February 5, 2007 (Missoula Plan Corrected *Ex Parte* Letter).

[2] / *Comment Sought On Amendments To The Missoula Plan Intercarrier Compensation Proposal To Incorporate A Federal Benchmark Mechanism*, Public Notice, CC Docket No. 01-92, DA 07-738, Released February 16, 2007.

[3] / Effective July 1, 2006, the New Jersey Division of the Ratepayer Advocate is now Rate Counsel. The office of Rate Counsel is a Division within the New Jersey Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jersey citizens who often lack adequate representation in our political system. The Department of the Public Advocate was originally established in 1974, but was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Whitman's Reorganization Plan. See New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq. The mission of the Ratepayer Advocate was to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that were just and nondiscriminatory. In addition, the Ratepayer Advocate worked to insure that all consumers

state administrative and judicial proceedings. The above-captioned proceeding is germane to the Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996. The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will "promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." The resolution of the complex economic and policy issues that this proceeding embraces directly affects the structure of telecommunications markets, and the prices that consumers pay for basic telecommunications service.

In this proceeding, the Commission seeks to replace the various existing intercarrier compensation regimes "with a unified arrangement that accommodates competition and new technologies."[4] Among the FCC's goals in this proceeding are economic efficiency, preservation of universal service, competitive neutrality, technological neutrality, and compatibility of any proposal with the FCC's legal authority to implement such plan. Ultimately, the resolution of this complex proceeding will affect consumers' prices and the competitive landscape. As the Rate Counsel stated in initial

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were knowledgeable about the choices they had in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. §§ 52:27EE-1 et seq.). The Department is authorized by statute to "represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest," N.J.S.A. § 52: 27EE-57, i.e., an "interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." N.J.S.A.§52:27EE-12; The Division of Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers in utility matters. The Division of Rate Counsel represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates in Federal and state administrative and judicial proceedings.

[4] / *In the Matter of Developing a Unified Intercarrier Compensation Regime*, FCC CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, Released March 3, 2005 ("Intercarrier Compensation FNPRM" or FNPRM"), para. 1.

comments submitted on May 23, 2005, the Rate Counsel "particularly urges the Commission to consider the impact of new intercarrier compensation schemes on residential and small business consumers, rates for basic services, rural consumers, and low-volume users."[5] Rate Counsel also submitted initial and reply comments on the Missoula Plan on October 24, 2006 and February 2, 2007, respectively.[6]

B. SCOPE OF THE PUBLIC NOTICE

According to the ex parte filing of the Missoula Plan Supporters and five state commissions (Indiana, Maine, Nebraska, Vermont, and Wyoming), the Federal Benchmark Mechanism is designed to address issues faced by "early-adopter states," *i.e.*, those states that have already taken steps to reduce intrastate access rates.[7] The Public Notice seeks comment on the Federal Benchmark Mechanism.

II. SUMMARY AND PRELIMINARY ANALYSIS OF THE AMENDMENT

The original Missoula Plan establishes a Restructure Mechanism to replace carriers' foregone intrastate access revenues with funds contributed by end users in all states.[8] States that have already made progress in reducing access rates, the so-called "early adopter states," however, opposed this feature of the Plan because it effectively

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[5] / Initial Comments of the Rate Counsel, May 23, 2005, at 3. The Rate Counsel also submitted reply comments on July 20, 2005.

[6] / *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the New Jersey Division of Rate Counsel, October 24, 2006; Reply Comments of the New Jersey Division of Rate Counsel, February 1, 2007. Rate Counsel also filed comments and reply comments regarding the Phantom Traffic Solution. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the New Jersey Division of Rate Counsel, December 7, 2006; Reply Comments of the New Jersey Division of Rate Counsel, January 3, 2007.

[7] / *Ex Parte* Letter.

[8] / *In the Matter of Developing a Unified Intercarrier Compensation Regime*, FCC CC Docket No. 01-92, *Supporting Comparability through a Federal Benchmark Mechanism*, January 30, 2007 ("Federal Benchmark Mechanism Amendment"), at 2.

penalizes them for the steps state regulators have already taken.[9] More specifically, although the early adopter states qualify for few or no Restructure Mechanism dollars as a result of proactive policies to reduce access charges, end-users in those states nevertheless contribute to the Restructure Mechanism. Furthermore, several early adopter states have created state universal service funds, financed by end-user contributions. As a result, proponents of the Federal Benchmark Mechanism assert that end-users in early adopter states are unfairly funding their own initiatives to restructure access charges as well as subsidizing a portion of restructuring efforts in other states.[10]

The original Missoula Plan includes an Early Adopter Fund of approximately $200 million to address the early adopters' concerns.[11] The proposed Amendment, designed by a working group of Missoula Plan supporters, recommends the adoption of an additional mechanism, called the Federal Benchmark Mechanism. The Federal Benchmark Mechanism relies on national residential rate benchmarks to target support to states that have already reduced switched access charges. The Federal Benchmark Mechanism defines the High Benchmark Target ("HBT") as $25.00, and the Low Benchmark Target ("LBT") as $20.00.[12] In general, the Federal Benchmark Mechanism replaces end-user-contributed funds that are proposed by the Missoula Plan as Subscriber Line Charge ("SLC") increases, with Early Adopter Funds. The Mechanism also reduces

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[9] / *In the Matter of Developing a Unified Intercarrier Compensation Regime,* FCC CC Docket No. 01-92; Missoula Intercarrier Compensation Plan, DA 06-1510, Motion of the Indiana Utility Regulatory Commission, Maine Public Utilities Commission, Montana Public Service Commission, Nebraska Public Service Commission, Vermont Department of Public Service, Vermont Public Service Board, Wyoming Public Service Commission, ("Early Adopter Commissions") For Extension of Time, December 20, 2006, at 3, stating: "The Early Adopter Regulatory Commissions are actively engaged in modeling proposed modifications to the Missoula Base Plan that could allow them to support the plan." *See, also,* Federal Benchmark Mechanism Amendment, at 2.

[10] / Federal Benchmark Mechanism Amendment, at 2.

[11] / *Id.*, at 1.

[12] / *Id.*, at 3.

USF contributions in jurisdictions with state intrastate universal service funds. The Federal Benchmark Mechanism includes three categories of funding to address the range of states' circumstances. Several states qualify for two or three of the funding categories.

The proposed Mechanism appropriately recognizes the importance of assessing revenues associated with ILECs' local exchange service when assessing states' needs for universal service funding. If the Commission approves the proposed Mechanism, comprehensive and verifiable data about carriers' revenues will be essential. As carriers seek and in some instances obtain the classification of historically non-competitive intrastate services as competitive, access to relevant data may become more difficult for regulators. In any case, Rate Counsel concurs that early adopters should not be penalized.

Category A funding is targeted to states that have end-user rates at or above the HBT. If residential revenue per line is greater than the HBT, no SLC increase would occur. If the SLC increase proposed by the Missoula Plan would cause the revenue per line to exceed the HBT, the Mechanism allows carriers to increase the SLC only until the revenue per line is equal to the HBT. The Mechanism's Category A funding then replaces all or the remainder of the allowable SLC increase.[13]

Category B funding is targeted to states with very high rates and states with a revenue per line greater than the HBT before any SLC increase. States in this situation recover 75% of the difference between the revenue per line and the HBT from the

[13] / *Id.*, at 4.

Mechanism. The funds are to be used first to reduce end-user contributions to a state intrastate universal service fund, if one exists, and then to reduce interstate SLCs.[14]

A third category of funds, Category C funds, is designed to assist early adopter states that have reduced intrastate access charges, but have not replaced that revenue with higher rates. These states have created intrastate high cost universal service funds. Category C funding is used to reduce end-user contributions to the intrastate USF. States that receive Category B funds may also eligible for Category C funds, provided that the sum of Category B and Category C funds are not greater than either $10 million or the total of the state's universal service fund, whichever is smaller.[15]

Finally, in states where the revenue per line is currently lower than the Low Benchmark Target ("LBT"), the Mechanism provides for a Low Rate Adjustment ("LRA"). This provision effectively prevents states that have not yet reduced access charges from relying on Restructure Mechanism funds as heavily as they otherwise would under the originally proposed Missoula Plan. Instead, these states would be allowed to increase the SLC over and above what they can under the Missoula Plan, but not to exceed $2.00. Proponents suggest that the Low Rate Adjustment reduces the burden on the Restructure Mechanism.[16]

One aspect of the Mechanism that merits consideration is the potential impact on states with rates that are low, not necessarily because the costs of providing basic local exchange service are low (or revenues particularly high) but rather as a result of affirmative state regulatory action. Examples of such regulatory initiative that federal

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[14] / *Id.*, at pages 4-5.

[15] / *Id.*, at pages 5-6.

[16] / *Id.*, at pages 6-7.

mechanisms should not penalize include relatively larger productivity offsets in an ILEC's price cap plan than those set by state regulators in other states, a service quality index that yields lower rates when service quality declines below acceptable levels, or lower allowed cost of capital.

The working group estimates that the Mechanism will add approximately $806 million to the cost of the Missoula Plan. Category A funding will require $579 million, Category B funding will require $141 million, and Category C funding will require $111 million.[17] The Low Rate Adjustment is estimated to reduce the Restructure Mechanism requirements by $25 million.[18] Thirty-nine states would receive net positive support through the Mechanism.[19] Twelve states would receive funding through all three Categories of funding.[20] The Low Rate Adjustment would reduce Restructure Mechanism funding for six states.[21]

The Missoula Plan calls for $12,655,475 to be paid to carriers to replace access and "other intercarrier losses" under the Plan in New Jersey. The proposed Federal Benchmark Mechanism would not provide any funds under Category A, B, or C for New Jersey. In addition, the Low Rate Adjustment would reduce Restructure Mechanism funding in New Jersey by $3,678,352. The "Net RM and FBM" (the sum of the Restructure Mechanism and the Federal Benchmark Mechanism) for New Jersey is

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[17] / *Id.*, at 7.

[18] / *Id.*

[19] / *Id.*

[20] / *Id.*, at attachment "Effects of Missoula Plan Restructure Mechanism and Federal Benchmark Mechanism."

[21] / *Id.*

$8,977,123.[22] Rate Counsel recommends that the Commission consider the fact that the national residential rate benchmark does not include consumers' rates for intrastate toll or vertical services,[23] which vary significantly among states and which consumers pay. For example, local calling areas in New Jersey are small, which results in above-average toll rates, which the Mechanism does not appear to address.

The Model Results presented by the Federal Benchmark Mechanism Amendment suggest that New Jersey's share of the incremental cost to the Lifeline program due to changes in the Missoula Plan would be approximately $5.13-million. Therefore, the total impact would be $14.1-million.[24] In sum, the Federal Benchmark Mechanism amendment is projected to result in a $0.39 per line per month "impact" on New Jersey's residential customers (assuming all benefits flow to residential customers).[25] (As used in the proposal, the "impact" corresponds with an average net gain to consumers of $0.39.) However the incremental monthly USF assessment of $0.38 per line yields a total net benefit to New Jersey residential customers is projected to be $0.01 per month.[26] The merits of the proposal depend critically upon carriers flowing through their reduced access charges to end users.

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[22] / *Id.*

[23] / Federal Benchmark Mechanism Amendment, at 3.

[24] / *Id.*, at attachment "Model Results by State with Estimates of New Benefit to Residential Customers."

[25] / *Id.*

[26] / *Id.*

III. THE PROPOSED AMENDMENT DOES NOT FULLY ADDRESS THE DEFICIENCIES OF THE MISSOULA PLAN

Rate Counsel commends the proponents of the Mechanism for seeking modifications to the Missoula Plan to distribute more fairly the burden of achieving the nation's universal service goals, but continues to oppose plans that would raise end user charges for the numerous reasons set forth in Rate Counsel's initial and reply comments. The proposed amendment may improve some aspects of the Missoula Plan but does not address the fundamental unfairness of burdening end users with efforts to unify the industry's myriad of intercarrier compensation plans.

Rate Counsel reiterates its recommendation that the Commission reject the Missoula Plan for the numerous reasons detailed in Rate Counsel's initial and reply comments.[27] In particular:

- Reforming intercarrier compensation does not require dollar-for-dollar "revenue recovery" for the incumbent local exchange carriers ("ILEC"): the Commission should reject the ill-conceived objective of the Missoula Plan proponents to insulate incumbents from the impact of emerging competition and evolving technology.
- The lack of consumer endorsement of the Missoula Plan provides compelling evidence that the plan would harm consumers.[28] The Missoula Plan would

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[27] / Rate Counsel Initial Comments, at page 27, and Rate Counsel Reply Comments at pages 2-4.

[28] / In its Initial Comments, Rate Counsel faulted the process that yielded the Missoula Plan for purportedly excluding consumer representation. Rate Counsel understands that consumer representatives participated in early Missoula Plan meetings. However, the fact that ultimately these consumer advocates did not endorse the Missoula Plan suggests that the plan's proponents failed to address adequately consumer concerns. The National Association of State Utility Consumer Advocates

increase basic local exchange rates despite declining costs and despite the purportedly competitive market.

- The Missoula Plan would harm all consumers, and would harm particularly the working poor, who do not qualify for Lifeline programs; low-income customers who are eligible for but do not participate in Lifeline programs; consumers residing in rural communities; and low-volume consumers. These customers are precisely the consumers who are least likely to have access to emerging competitive alternatives.
- The Missoula Plan would unnecessarily increase the high cost fund.
- The Missoula Plan would improperly usurp states' ratemaking authority.
- The Missoula Plan does not merit further attention, and indeed is a distraction from more pressing matters.
- The Commission should adopt a more gradual plan for unifying intercarrier compensation that does not penalize consumers nor insulate incumbents from the impact of competition.

As the Supporters of the Missoula Plan point out, the Federal Benchmark Mechanism will *increase* the Missoula Plan by over $800 million.[29] Absent regulatory intervention, Rate Counsel is concerned that these monies would flow to carriers rather than to consumers.

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participated in the Task Force proceedings, but did not participate in the development of the Missoula Plan.

[29] / Federal Benchmark Mechanism Amendment, at page 7.

IV. CONCLUSION

Rate Counsel commends the Amendment proponents for their efforts to design a mechanism that does not penalize early adopters. For the reasons set forth in Rate Counsel's earlier comments in this proceeding, and as is discussed above, Rate Counsel is concerned about some of the remaining fundamental flaws in the Missoula Plan. Based on its preliminary review of the proposed amendment, Rate Counsel is also concerned that the Federal Benchmark Mechanism may not adequately address state-specific rate design and regulatory issues, such as historically small local calling areas that could result in average revenue calculations that understate carriers' actual revenues and affirmative regulatory policies that could explain below-average revenues.

Respectfully submitted,

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