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

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

Comments of the
Ad Hoc Telecommunications Users Committee

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Summary

The Ad Hoc Telecommunications Users Committee ("Ad Hoc") supports the adoption of a single, economically rational intercarrier compensation regime, but opposes significant aspects of the Missoula Plan.

Carriers currently pay each other vastly different rates for functionally the same origination and termination services. This situation is economically irrational and distorts investment and purchase decisions. The distortions inevitably produce economic loss that harms buyers of telecommunications goods and services and the country more generally.

Despite the need for a single, rational intercarrier compensation scheme, the Commission should reject the Missoula Plan because the Plan largely is premised on maintaining carrier revenues. None of the Missoula Plan proponents have justified revenue neutrality. The Regional Bell Operating Companies (RBOCs) are earning excessive interstate returns and the Commission has no idea what rural local exchange carriers (RLECs) are earning. Ad Hoc does not doubt that RLECs derive a material portion of their revenues from access charges and universal service payments. That, however, is far from justification for a "make whole" component. Nor can the Commission reasonably conclude that current revenues are cost-driven for either the RBOCs or the RLECs.

Given that the RLECs present a particularly difficult problem, the Commission should defer imposing a new, unified intercarrier compensation

regime on RLECs at this time. The Commission can gain some experience with the new system and tackle, perhaps through use of reverse auctions, the underlying problems with the high cost component of the Universal Service Fund before further increasing the size of the Universal Service Fund. Moreover, the level of economic distortion attributable to RLEC intercarrier compensation charges is relatively small compared to the distortions caused by intercarrier compensation charges levied by larger local exchange carriers.

Under no circumstances should Restructure Mechanism charges be levied on business broadband (special access) connections. The Missoula Plan is about rebalancing switched access rates. The Commission should not allow such rebalancing to shift recovery of switched access revenues to business broadband connections.

The Commission should also reject that aspect of the Missoula Plan that without explanation or justification would increase Subscriber Line Charges at step five by an economy wide inflation factor.

The Missoula Plan would reduce usage-sensitive access charges paid by long distance carriers because of material increases in end user line charges. The Commission should afford end users a fresh look opportunity to win market-based flow through of the cost savings long distance providers will enjoy at the expense of end users. Ad Hoc only asks for equitable treatment of end users.

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The Ad Hoc Telecommunications Users Committee (hereinafter Ad Hoc or the Committee)[1] hereby submits its comments on the Missoula Intercarrier Compensation Reform Plan (Missoula Plan).[2] Ad Hoc agrees that the Commission should replace the existing patchwork of intercarrier compensation rules with a unified approach, but opposes portions of the Missoula Plan.[3]

I. The Commission Should Replace Current, Disparate Payment Mechanisms With A Uniform Plan.

The Commission has previously noted that under currently effective Commission sanctioned mechanisms "identical uses of the network" are treated

1 Ad Hoc is an unincorporated, nonprofit entity that accepts no carrier funding and exists to represent its members' interests in telecommunications matters pending before governmental authorities. Ad Hoc's members are all substantial purchasers of telecommunications services, and are considered "enterprise customers" within the telecommunications industry. Ten of Ad Hoc's members are in the Fortune 100 and fourteen members are in the Fortune 500. They estimate their combined annual spend on telecommunication services at between two and three billion dollars per year. Ad Hoc admits no carriers as members and accepts no carrier funding. Ad Hoc's self-interest is served by avoiding the imposition of unnecessary regulatory constraints on incumbent service providers, such as BellSouth. In an effectively competitive market, Ad Hoc's members do not need regulation to protect their interests.

2 Public Notice, DA 06-1510, released July 25, 2006.

3 Missoula Plan, Actual Text at 1, states that, "The Plan is the product of months of negotiation by hundreds of companies from all segments of the industry." Ad Hoc certainly was not a participant in such discussions, and suspects that many other commenters were not participants in the aforementioned "negotiations."

differently, "even though such disparate treatment usually has no economic or technical basis,"[4] resulting in "regulatory arbitrage."[5] Different rates for identical functionalities necessarily result in market distortions. These inappropriately benefit certain types of services and carriers at the expense of others. They also influence the incentives of originating and terminating carriers to enter into wholesale agreements of various types, as well as the manner which connecting carriers design and offer telecommunications service products. There seems to be no dispute that the costs associated with the provision of originating and terminating interconnection are the same, regardless of the jurisdictional nature of the traffic or the identity of the service provider. There seems also to be no dispute that current switched access charge levels – both interstate and intrastate – are set at high multiples of cost. If that were not the case, the Missoula Plan proponents would not be suggesting major introductions in switched access changes. The problem at hand is how to get all of the rates to the same level.

Interconnection charges can be a major component of overall service costs – in some cases representing as much as 40% to 50% of the ultimate retail price of a service. Continuation of the current hodge-podge of pricing schemes wherein some, but not all, forms of interconnection are priced dramatically in excess of costs will of necessity impact infrastructure investment, service design, competition and ultimately end-user purchase decisions. Network topology and

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[4] Developing a Unified Intercarrier Compensation Regime, CC Dkt. No 01-92, FCC 05-33, para. 15 (rel. Mar. 3, 2005) ("ICC FNPRM").

[5] Developing a Unified Intercarrier Compensation Regime, CC Dkt. No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9616 (2001) ("NPRM"), para. 12 and FNPRM, at para. 15.

technology choices should be driven by real differences in the economic costs of providing end-to-end service, not by distorted interconnection rates induced by a flawed regulatory system.

End-users attempting to make rational choices among network platforms, access methods and service packages are hampered in their ability to do so as a result of distortions attributable to regulatory decisions. Each day that this problem goes on, some U.S. business somewhere is making a long-term technology choice, investing in hardware, changing systems, attempting to make the most economical purchase decision based upon the pricing information available in the market. But that pricing information is distorted because the underlying wholesale interconnection rates favor some technologies and service platforms over others – meaning that rational choices may become difficult or impossible.

The terminating charge for a 10-mile call could be "local," and subject to reciprocal compensation rates if the interconnection is between Local Exchange Carriers (LECs), or it could be priced as much more expensive "intrastate access" if it is first delivered to an IXC and then handed off to a LEC for termination. Competitive impacts aside, the result for an enterprise customer attempting to minimize costs is that it is required to purchase additional facilities that allow the segregation of traffic. Instead of having all outbound traffic go directly to an IXC POP over a single dedicated facility, the pricing distortions in the wholesale market often make it less expensive for the enterprise customer to separate out and deliver its traffic to a LEC over a second, and otherwise unnecessary, transmission facility.

These distortions impact competitors and their ability to function in the market as well. A call that travels as far as three hundred miles or more and is carried across a state boundary could be billed as local if it is delivered by a wireless carrier and is located within a wireless MTA, or at a much higher interstate access price if it is handed off by an IXC – giving the wireless carrier a decisive cost advantage in the offering of its toll services over the landline service. While the correct interconnection treatment of calls transmitted using Voice over Internet Protocol (VoIP) is still an open issue, the competitive advantage that would be afforded a VoIP toll-service provider that does not have to pay access charges vis-à-vis a circuit-switched provider that does is substantial enough to cause both competitors and customers to entertain plans to adopt VoIP, apart from other IP-platform advantages – with their decision making being further distorted by the risk that a subsequent change in regulatory treatment of VoIP calls turn what at first seemed like the more efficient choice into a potentially costly misadventure.

The ability to determine what interconnection charge should apply under the current system is also becoming more difficult. As an example, SBC offers a service to customers that subscribe both to SBC local service and service from SBC's wireless arm, Cingular. The new service, called "Fastforward" allows customers to utilize a special phone "cradle" that automatically reroutes incoming wireless calls to the customer's SBC landline phone, allowing the customer to receive calls placed to their wireless number without incurring airtime charges. Does the fact that the call is terminated on an SBC customer's landline phone change the nature of the call? An interconnecting carrier involved in the origination of a call to Cingular for completion to a customer using "Fastforward" would have no way of determining how that interconnection should be billed. If the call termination would be within the wireless MTA, but outside the landline local calling area and it is completed as a landline call, should the call originator collect an access charge? SBC's service is but one example of the blurring lines between different interconnection options and the need for a uniform system of charges.[6]

Allowing the existing array of uneconomic intercarrier compensation schemes to continue would cause even greater economic and operational distortions. The Commission should do all that it can to eliminate such distortions – distortions that clearly are undesirable in the current hyper-competitive global economy.

II. The Commission Should Not Rely On The Hope Of Competition To Regulate And Normalize Charges For The Origination And Termination Of Traffic.

The Commission cannot rationally rely upon competition to set and regulate interconnection prices, and any alternative recovery mechanism used to compensate LECs for reduced interconnections charges (e.g., SLCs, USF). As

[6] This problem is not unique to SBC/Cingular's Fastforward service. Wireless users have long been able to forward inbound calls to landline phones. Yet there is no existing mechanism whereby the originating and terminating LECs may collect access charges from the wireless carrier in the event that the call, which may have been intra-MTA for purposes of a wireless termination, is non-local with respect to landline service.

Ad Hoc demonstrated in its August 2004 white paper, Competition in Access Markets: Reality or Illusion. A Proposal for Regulating Uncertain Markets,[7] real and/or potential competition has not been sufficient to discipline LEC pricing practices to date.

Ad Hoc has shown repeatedly that premature deregulation of special access services in advance of the development of competition sufficient to discipline Incumbent Local Exchange Carrier (ILEC) pricing has resulted in special access services priced significantly above cost. In other words, the potential that competitors might deploy services to enterprise customers has not been sufficient to constrain ILEC behavior. In fact, based upon year-end 2003 data, Economics and Technology (ETI), Ad Hoc's economic consultant, was able to quantify that every day that the FCC allowed to pass before reducing the LECs' special access rates cost business and government users more than $15 million.[8] Special access rates during calendar year 2005 generated some $7.8 billion in excessive special access revenues, $21.3 million per day. This means that the amount by which corporate users of special access services were being overcharged in 2005 had increased by approximately 42% over the already excessive 2003 levels.[9]

Nor do inter-modal competitive alternatives exist to discipline interconnection charges for switched access service. If, in fact, inter-modal

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7 Competition in Access Markets: Reality or Illusion. A Proposal for Regulating Uncertain Markets, ("Reality or Illusion"), Economics and Technology, Inc. (Aug. 2004), submitted by Ad Hoc in CC Dkt. Nos. 00-175, 01-337, 04-36, 02-33, 95-20, 98-10, 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, 00-229, 01-338, 03-173, WC Dkt. Nos. 02-112, 04-242, RM-10593, and RM-10329.

8 Id., at iii, and 7-8.

9 See, Ad Hoc Reply Comments, CC Dkt. No. 05-65 (filed May 10, 2005), Declaration of Susan M. Gately, para. 6.

competitive alternatives did exist at levels sufficient to impact LEC pricing, the differentials between interconnection rates of different types would have already been substantially eliminated. But such is not the case. Evidence presented in Reality and Illusion documents that, contrary to the FCC's expectations at the time it adopted the CALLS order, competition has not forced further decreases in switched access charges. In fact, the average switched access price per minute of use has increased, not decreased, once CALLS-mandated rate decreases were stopped.[10]

The Commission itself has found that marketplace alternatives do not exist at the point at which a carrier needs to obtain call origination and termination service to reach a customer. The finding of what is in essence a very localized monopoly was at the heart of the Commission's decision in the CLEC Access Charge Order.[11] In that proceeding the Commission was examining the conditions that long distance providers (IXCs) faced in purchasing "access service as an input for the long distance service that they provide to their end users."[12] The specific concern at the time related to Competitive Local Exchange Carrier (CLEC) access charges. However, the monopoly condition that the FCC found faced the IXC customers of CLECs is relevant to all parties that attempt to interconnect to an end user customer of another carrier. The FCC found that "IXCs are subject to the monopoly power that CLECs wield over access to their end user" and "given the unique nature of the market in which IXCs purchase

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[10] Reality or Illusion, at 38-40 and Table 3.3.

[11] Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Dkt. No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) ("CLEC Access Charge Order").

[12] Id., para. 38.

CLEC access, however, we conclude that it is necessary to constrain the extent to which CLECs can exercise their monopoly power and recover an excessive share of their costs from their IXC access customers – and, through them, the long distance market generally."[13] Indeed, if CLECs have monopoly power with respect to access services furnished to IXCs, surely ILECs have, if anything, even greater monopoly power with respect to these services. In the absence of marketplace alternatives, the Commission cannot reasonably rely on negotiated agreements, such as the Missoula Plan, to set the rates, terms and conditions for the origination and termination of traffic destined to or coming from other networks. It is the Commission's job to set those rates.

III. The Commission Should Reject "Revenue Neutrality" As A Goal For Intercarrier Compensation Reform.

Through rate structure changes and a Restructure Mechanism, the Missoula Plan aims "to replace revenues historically earned through higher intercarrier charges."[14] The Commission should, however, reject revenue replacement, i.e., revenue neutrality, as an operative principal of intercarrier compensation reform.

A. Missoula Plan Proponents Have Provided No Cost Recovery Evidence To Justify Revenue Neutrality.

The Communications Act, which the Commission presumably is committed to enforcing, requires that the rates of carriers subject to Title II

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[13] Id., at paras. 38 and 39.
[14] Missoula Plan, at 3.

thereof be just and reasonable.[15] Ad Hoc knows of no other metric than earnings to use when assessing the justness and reasonableness of carrier rates.[16]

The Regional Bell Operating Companies (RBOCs) earnings are excessive. Commission data show that in 2005, the RBOCs earned the following returns on their regulated interstate services:[17]

- AT&T/SBC – 27.27%
- BellSouth – 22.47%
- Qwest – 32.67%
- Verizon – 18.89%

The Commission should not perpetuate, and possibly even increase, these returns.

There is no evidence that local exchange carriers would be unable to earn reasonable rates of return if the Commission adopts an intercarrier compensation model that significantly reduces access charges. That is the case with respect to price cap carriers and rate of return carriers.

Case law teaches that it is the effect of a rate order that determines whether a regulatory authority has acted unlawfully.[18] Even if the Commission were to mandate a new intercarrier compensation regime that would reduce carriers' revenues, the carriers still must demonstrate that they would be unable

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[15] 47 USC 201(b). The courts have recognized that the Commission must "execute and enforce" the provisions of the Communications Act and that it may not abdicate its duty to ensure that statutory standards are met. AT&T v. FCC, 572 F.2d 17, 25 (2d Cir. 1975), cert. denied, 439 U.S. 875 (1978).

[16] See, e.g., FPC v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944); American Telephone and Telegraph Co. v. FCC, 836 F.2d 1386, 1390 (D.C. Cir. 1988); Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989).

[17] FCC, ARMIS Report 43-04, Access Report: Table I, YE 2005; available at http://www.fcc.gov/wcb/eafs/ (accessed October 16, 2006).

[18] Duquense, 488 U.S.at 310.

to realize a reasonable rate of return as a result of such an order. Carriers claiming a need to recover costs should be required to make showings that include, but may not be limited to, (1) allocation of costs between regulated and unregulated services and between the intrastate and interstate jurisdictions, (2) the usage sensitive access revenue lost as a result of a new intercarrier compensation regime, (3) the demand stimulation effect of lower access charges, (4) the revenue effect of increased line charges authorized by the Commission, (5) other possible rate changes and their effect on revenues, (6) anticipated revenues and earnings after implementation of new intercarrier compensation rules, taking into account all carrier revenues and earnings, and (7) the rate of return deemed reasonable given the risks and market conditions confronting the carrier. To the best of Ad Hoc's knowledge, Missoula Plan supporters have not made any such showings. These showings would not be easily made, but would be necessary before the Commission could reasonably adopt, or allow carriers with market power to implement, a rate element or draw more money from the Universal Service Fund (USF) to "recover costs."

Missoula Plan supporters will likely contend that any requirement that they make such showings amounts to a reversion to rate of return regulation, which the Commission has long since abandoned for the larger ILECs. But the "make whole" revenue-neutrality feature of the Missoula Plan is itself a reversion to such "revenue requirements" type rate setting. Indeed, the sole difference between what Missoula Plan supporters seek and traditional rate of return regulation lies in the manner by which the revenue requirement will be established: Under the

Missoula Plan, "revenue requirement" is simply set equal to whatever pre-Missoula ILEC revenues that ILECs enjoy. The Missoula Plan implies that the ILECs have acquired an "entitlement" to those revenues. Under rate of return regulation, "revenue requirement" is established based upon an assessment of legitimate costs and a reasonable rate of return. All of the specific interconnection services at issue here are, fundamentally, monopoly services that confront little or no competitive challenge. ILECs can claim no "entitlement" to a revenue level that they were able to achieve largely through exploitation of their monopoly power, and there is simply no rational basis for those revenues to be guaranteed where, as here, a specific goal of intercarrier compensation reform is to erase monopoly rents from essential interconnection services.

The Commission may not rely on existing revenue levels as a measure of reasonable cost recovery. The RBOC earnings data displayed above prove that the RBOCs are more than recovering their respective costs. As for Rural Local Exchange Carriers (RLECs), Western Wireless in another proceeding has asserted that, "[n]o comprehensive audit of the regulatory accounts of the vast majority of rural ILECs has been conducted in the past decade, either by the FCC, state commissions, NECA, the Universal Service Administrative Co. (USAC), or independent auditors retained by the ILECs themselves."[19] Western Wireless also demonstrated that RLECs have opportunity and incentive to misallocate costs in ways that would "[i]mproperly augment universal service

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[19] Western Wireless Petition for Rulemaking, Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers, CC Dkt. No. 96-45 and RM-10822 (filed Oct. 30, 2003), at 26 (footnote omitted) ("Western Wireless Petition").

disbursement and "pad their rates."[20] Ad Hoc urged the Commission to start the rulemaking sought by Western Wireless. Ad Hoc reasoned that despite the fact that states are, "[t]o file annual certifications with the Commission to ensure that carriers use universal service support 'only for the provision, maintenance and upgrading of facilities and services for which the support is intended' consistent with section 254(e)," the certification requirement has not produced the level of regulatory oversight needed to prevent cost misallocations.[21]

The bottom line is that the Commission has no reasonable basis on which to assess the LECs' current level of earnings or their projected earnings after implementation of new intercarrier compensation rules. Neither price cap ILECs nor rate of return RLECs have provided the data needed to support a Commission finding that additional cost recovery would be needed because of implementation of a new intercarrier compensation model.[22]

B. Revenue Neutrality Is Not A Legitimate Operative Principle.

Nor have the proponents of the Missoula Plan justified revenue neutrality, as distinguished from cost recovery. Indeed, they have not even tried to justify revenue neutrality. The Commission is not legally required "[t]o make any

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[20] Id.

[21] Ad Hoc Comments on Western Wireless Petition, CC Dkt. No. 96-45 and RM-10822, at 6-7 (filed Jan. 16, 2004).

[22] Price cap LECs, of course, do not operate under a cost of service regulatory regime. They may seek a low end adjustment to their Actual Price Indices if their earnings fall below the just and reasonable zone. None of the RBOCs, however, will likely seek a low end adjustment given that their interstate rates of return range from almost 20% to almost 33% for calendar year 2005. Source: FCC, ARMIS Report 43-04, Access Report: Table I, YE 2005.

transition to a compensation regime revenue neutral for the affected carriers."[23] None of the applicable statutory provisions require revenue neutrality.

The Commission may not require carriers to offer service at rates that would fail to yield adequate returns,[24] and section 254 of the Communications Act of 1934, as amended, sets out universal service requirements. But none of the parties have made the showings that would be needed to require revenue neutrality to satisfy the requirements of sections 201 and 254. Although some RLECs may experience reduced revenues, a showing of reduced revenues is far from a showing that such carriers will not be able to offer services that are reasonably comparable to the services offered in urban areas at rates reasonably comparable to the rates charged in urban areas.[25]

The Commission should come to grips with the high cost problem that is driving Universal Service Fund growth before it leaps to maintain current RLEC revenues in a new intercarrier compensation regime. It simply makes no sense for the Commission to dramatically increase the amount of USF subsidies flowing to RLECs because the RLECs want to maintain their current revenue levels and some parties are willing to make major compromises to win RLEC support, apparently believing that absent some accommodation of the RLECs meaningful reform of the intercarrier compensation system is impossible.

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23 ICC FNPRM, para. 100.
24 47 USC §201(b).
25 See, 47 USC §254(b).

IV. The Commission Should Defer Applying New Intercarrier Compensation Rules To The RLECs.

In January 2005, the Progress and Freedom Foundation (PFF) released a Special Report entitled The Myths and Realities of Universal Service: Revisiting the Justification for the Current Subsidy Structure (hereinafter the Report). Among the points made by the PFF Report are the following:

- Total high cost disbursements have doubled from $1.7 to $3.3 billion from 1999 to 2003 and are forecast to climb to $3.9 billion by the end of 2005. Report at 106-107.
- The Interstate Common Line Support (ICLS) and the Interstate Access Support (IAS) have grown from the time they were initiated (2002 and 2000, respectively) from $173 million and $283 million to estimated levels of $1,127 million and $746 million in 2005. Report at 107, Exhibit IV.2.A.
- The funding mechanism provides an incentive to be inefficient and provides no incentive to aggregate operations to achieve economies of scale. Report at 110.
- Because the USF is currently collected as a surcharge on interstate long distance calls, the effective price of long distance calls is raised (via the surcharge) in order to lower them through lower access charges paid by long distance carriers. Report at 109-110.

The PFF believes that reform is overdue. Ad Hoc agrees with the PFF on this point. The PFF acknowledges that reform of the existing Universal Service regime will be difficult, but not impossible, given “political realities.” Report at vii.

Again, Ad Hoc agrees with the PFF. The Commission should make decisions regarding such reform before it even considers the Restructure Mechanism proposed in the Missoula Plan. The Commission should not make the current USF "mess" even worse by increasing USF payments to RLECs to assure revenue neutrality.

The RBOCs' 2005 earnings displayed on page 9, supra, prove that the Commission should not even consider revenue neutrality for the RBOCs in formulating a new intercarrier compensation model.

The Commission should defer a decision on whether to include rate of return RLECs in a reformed intercarrier compensation regime that would materially lower access service rates. The Commission has asked the Federal-State Joint Board on Universal Service to study possible changes to the five-year plan adopted in the Rural Task Force Order, 16 FCC Rcd 11244 (2001).[26] In response the Joint Board has invited interested persons to comment on the possibility of using reverse auctions to determine the size of high cost universal service subsidies and to identify the subsidy recipients. There could be significant changes to the bases for USF payments to RLECs and the amount of such payments. Deferring a decision on whether and how to include rate of return RLECs in a new intercarrier carrier compensation scheme at this time would almost certainly avoid unnecessary market churn. Moreover, deferring a decision on whether to apply new intercarrier compensation rules to RLECs would give the Commission experience with the operation and effects of the new

[26] Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, Order, 19 FCC Rcd 11538 (2004). Order directs the Joint Board to study changes to the rural High Cost Fund, to be effective after June 30, 2006.

rules before applying them to the carriers who claim to be most adversely affected by changing the current intercarrier compensation system. The economic distortion that would continue by maintaining the status quo for the RLECs while the Commission wrestles with the high cost problem and gains experience with a unified intercarrier compensation regime would be relatively small given the offsetting benefits derived from deferral. Accordingly, Ad Hoc urges the Commission to reject the Restructure Mechanism feature of the Missoula Plan at the time.

V. Any Assessment Mechanism Designed to Recover Lost Switched Access Revenues Should Not Apply To Business Broadband Connections.

The Missoula Plan suggests that Restructure Mechanism capacity-based assessments should be levied on business broadband connections.[27] If the Commission incorrectly determines that it should adopt a funding mechanism other than SLC increases to cover lost switched access service revenues, it should not, however, recover such revenues from business broadband connections.

Business broadband services do not utilize LEC switching equipment, and in fact are in many cases substitutes for the switched access charges. Large commercial enterprises, such as Ad Hoc's members, rely heavily on business broadband for the dedicated, "final mile" connections that make up their private corporate networks, specialized data systems, and high-capacity, mission-critical transmission facilities at locations with heavy traffic volumes. Special access

[27] Missoula Plan, Exhibit 1, "Per Unit Contribution With the Incremental RM" from the Missoula Plan; Exhibit 2, n.15.

services have become an increasingly important part of the U.S. economy. During the last five years, as the number of interstate minutes being carried over the public switched network declined by almost 22% from $538 billion to $422 billion,[28] the number of business broadband voice-grade equivalent (VGE) lines in service was skyrocketing – VGEs increased by 134%, from $80 million to $186 million in that same time frame.[29] The Commission must not "fix" the distortions caused by non-cost-based switched access charges through pollution of business broadband rate structures. Not only would it be economically irrational to recover switching costs from dedicated business broadband services, it would be virtually impossible to do so in a manner that did not distort existing pricing relationships between business broadband facilities of different speeds. Collection of lost interconnection revenues from business broadband services will almost necessarily hamper the global competitiveness and efficiency of U.S. corporations by interfering with their adoption of new technologies and the use of high bandwidth services through the imposition of uneconomic subsidy elements on those services. Surely the Commission will put sound economics and the good of the country before the carriers' unjustified revenue neutrality claims.

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[28] Interstate switched access minute data for year end 2005 is not presently available. The data above reflects the periods 2001-2004. FCC, Trends in Telephone Service, at Table 10.1 (rel. June 21, 2005).

[29] Federal Communications Commission, ARMIS Report 43-08, Operating Data Report: Table III, YE 2000-2004. Available at http://www.fcc.gov/wcb/eafs/ (accessed May 18, 2005).

VI. The Commission Should Not Allow The Nationwide SLC Cap To Rise With Inflation Starting At Step Five.

At step five of the Missoula Plan the nationwide Subscriber Line Charges (SLCs) would rise with inflation each year.[30] The Missoula Plan proponents have provided no justification for this feature of the Plan.

The Commission should not prescribe an inflation adjusted SLC cap as part of reformation of intercarrier compensation. An inflation adjusted SLC cap would be squarely inconsistent with the Commission's prior findings when it adopted price caps rules that local exchange carrier costs inflate at a rate lower than economy-wide measures of inflation.[31] Those findings are embodied in the current price caps rules, which set maximum levels for SLCs and limit the extent to which local exchange carriers subject to price caps can increase the Price Cap Index for various service baskets.[32] The Commission cannot now reverse its position on the extent to which price cap carriers can increase their rates without a reasoned explanation. Missoula Plan proponents have not provided support for an inflation adjustment for SLCs, with no offset to the inflation adjustment for carrier productivity and lower input costs.[33] Merely wanting to have carrier support for Commission mandated changes to intercarrier compensation rules is not enough. Changing intercarrier compensation rules is not, of course, a game of "Let's Make a Deal."

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30 Missoula Plan Executive Summary, at 7; The Actual Text of the Missoula Plan, at 20.

31 Policy and Rules Concerning Rates for Dominant Carriers, CC Dkt. No. 87-313, 5 FCC Rcd 6786, 6787-89 (1990), Erratum, 5 FCC Rcd 7664 (1990), modified on recon., 6 FCC Rcd 2637 (1991), aff'd sub nom., National Rural Relecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

32 47 CFR 61.44.

33 Id:, Price Cap Performance Review for Local Exchange Carriers, 12 FCC Rcd 16642, 16646, 16651-98 (1997).

VII. The Commission Should Create A "Fresh Look" Opportunity.

If the Commission adopts a new intercarrier compensation mechanism that increases SLCs while access charges paid by long distance carriers decline, customers under multi-year contracts could actually incur higher SLCs while (1) their contractual service rates remain unchanged and (2) their long distance service providers' costs drop dramatically, as the source of ILEC revenues shift from usage-sensitive access charges to SLCs. This situation would be inequitable for end users under multi-year contracts with long distance carriers and would produce large gains for long distance service providers, including of course the ILEC affiliates. It would be even worse than the kind of situation from which the Commission previously has protected carriers. Affording end users a "fresh look" opportunity would allow the market place to address the fundamental unfairness presented by the Missoula Plan's imposition of higher SLCs on end users while channeling access charge reductions to long distance carriers.

In its seminal 1997 Universal Service reform order,[34] the Commission virtually invited carriers to "adjust" pre-existing contracts because carriers would be required to contribute to the USF.[35] The Commission reasoned that,

> By assessing a new contribution requirement, we create an expense or cost of doing business that was not anticipated at the time contracts were signed. Thus, we find that it would serve the public interest to allow telecommunications carriers and providers to make changes to existing contracts

[34] Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by Federal-State Joint Board on Universal Service, Errata, CC Dkt. No. 96-45, FCC 97-157 (rel. Jun. 4, 1997), affirmed in part, reversed in part and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999).

[35] Id., at 9209.

> for service in order to adjust for this new cost of doing business.[36]

If the Commission adopts the unified intercarrier compensation scheme described above, customers under multi-year contracts with long distance carriers collectively could be in a situation even worse than the long distance carriers for whom the Commission showed such great solicitude in 1997. Those carriers were required to make explicit contributions to the USF, but also enjoyed lower switched access charges as a result of the contemporaneous access reform order.[37] In this case, customers under multi-year contracts will still pay their preexisting contract rates for long distance services and will also pay higher SLCs, while the long distance carriers with whom they have contracts enjoy lower switched access charges won at the expense of their customers.

The Commission should give long distance customers under multi-year term contracts an opportunity to realize a market-based flow through of the access cost savings that the long distance carriers will enjoy. Customers then would have a chance to offset some of the higher SLC charges that they will confront. The Commission should allow for a market-based flow through of access cost savings by affording customers a 180-day "fresh look" window of opportunity within which they may terminate existing contracts. During this 180-day window customers and carriers can negotiate the extent to which long distance service rates should be reduced to reflect the carriers lower access

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36 Id.

37 Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges, CC Dkt. No. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982 (1997), aff'd Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523 (8th Cir. 1998).

costs, which will have been made possible by higher SLCs. If the negotiations do not produce mutually agreeable adjustments (which is possible), the customers should be allowed to terminate the subject contracts without liability, except for charges for services provided.

The Commission has previously used a "fresh look" opportunity to serve the public interest. The Commission gave Tariff 12 customers ninety days from the time 800 numbers became portable to terminate their Tariff 12 contractual packages without liability to "[e]nsure that customers who may be dependent on a specific 800 number cannot be leveraged by AT&T into long-term commitments for Tariff 12 packages that prevent their taking advantage of 800 number portability."

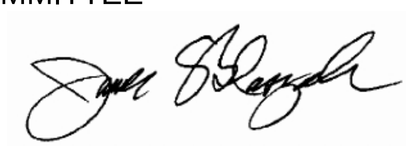
In the present case, the Commission should use a "fresh look" opportunity to give customers a chance to avoid, or partially offset, higher communications costs when their carriers' costs drop – all because of Commission action. In the 1997 Universal Service reform order, the Commission gave carriers an opportunity to reform contracts to recover additional costs imposed by a regulatory change. Customers should have an opportunity to use the market to avoid some of the cost increase that they would shoulder because of regulatory action. The Commission should not treat end users with less concern than it has shown long distance carriers.

VIII. Conclusion

In view of the foregoing, Ad Hoc respectfully requests that the Commission adopt a unified intercarrier compensation regime that is consistent with the views set forth in these Comments.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS USERS COMMITTEE



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Certificate of Service

I, Dorothy R. Nederman, hereby certify that true and correct copies of the preceding Comments of Ad Hoc Telecommunications Users Committee were filed this 25th day of October, 2006 via the FCC's ECFS system, and served by e-mail to:

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