

# PUBLIC SERVICE COMMISSION STATE OF MONTANA

Greg Jergeson, Chairman  
Doug Mood, Vice-Chairman  
Brad Molnar, Commissioner  
Robert H. Raney, Commissioner  
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## EX PARTE

October 27, 2008

Chairman Kevin Martin  
Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Intercarrier Compensation and Universal Service Funding Reform

Dear Chairman, Commissioners and Ms. Dortch:

The Montana Public Service Commission (MPSC) takes this opportunity to submit this Ex Parte in the matter of Intercarrier Compensation and Universal Service Funding (ICC and USF) reform.

The MPSC agrees with and endorses the NARUC's October 21 "Ex Parte Motion Seeking An FNPRM On Pending Order" ("Motion"). To emphasize certain points in the NARUC Motion the MPSC makes the following comments. First, there is a genuine due process concern if the FCC does not first seek comments on the ICC and USF reform contained in the pending order on any matter other than its Core (ISP) response. As the NARUC Motion asserts, there is lack of authoritative information on the FCC's ICC and USF reform proposals and the abbreviated time allowed for just Ex Parte comments is no substitute for deliberative comments on this unprecedented reform effort. FCC policy on ICC and USF reform should be informed policy. Second, the MPSC has heightened concern about the impacts of ICC and USF reform on Montana's rural carriers. Our concerns include but are not limited to the impact of using Federal

Universal Service Funds (FUSFs) to offset lost carrier access revenues, especially if there is a cap placed on the FUSF. Third, the MPSC also has heightened concern of the impact lost carrier access revenues will have on effective monthly access rates for consumers. Montana's per capita income is relatively low, nearly the bottom of the income totem, and increased expenses for basic service will only erode the disposable income of especially low-income consumers. Fourth, any ceiling on carrier access rates that does not recognize costs is a forced implicit subsidy for access, exactly the wrong public policy direction the FCC should be taking. Montana's largest non-rural incumbent local exchange carrier (Qwest) has recently updated its own cost for carrier access and the cost is closer to \$.0404/minute, nowhere near the rumored \$.0007/minute rate we hear echoed. Fifth, how the FCC intends to respond to the outstanding 10<sup>th</sup> Circuit Court of Appeals (the "Courts") remand to the FCC in relation to any capped FUSF or further dilution of such funds is a concern.<sup>1</sup> A related concern regards how any increase in rates that results from ICC and USF reform conforms with the Court's remand. Sixth, ICC and USF reform are not just about rates, but also includes issues involving competitive neutrality. The FCC's April 27, 2001 (release date) Order on Remand (See FCC 01-131, CC 99-68, ¶ 89) discussed its "mirroring" rule. The MPSC shares the FCC's heightened concern over the superior bargaining power of certain ILECs. The MPSC's concern, in part, extends to the Internet Protocol environment wherein ILECs still provide essential services connecting homes and businesses to the Internet and over which VoIP may be provided by competitors to the ILEC. The MPSC is concerned that if the FCC forces a \$.0007 rate on carriers with higher costs, that some ILECs with market power will abuse their position vis-à-vis competitors. Absent specific details of the FCC's ICC and USF reform proposal, and due process opportunities to further comment, further comments must await the release of the FCC's ICC and USF reform decision.

To conclude, we support the tenor of and the content of the NARUC Motion advising a limited FCC response on November 4<sup>th</sup>, to address the issue of terminating ISP-bound traffic compensation and a more deliberative, at least 90 day process, to allow interested parties to consider and comment on the balance of the FCC's ICC and USF reform proposals.

Sincerely,

Greg Jergeson  
Chairman  
Montana Public Service Commission

Cc: Honorable Senators Baucus and Tester, Honorable Representative Rehberg, Honorable Governor Brian Schwitzer.

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<sup>1</sup> *Qwest Comms. Int'l, Inc. v. FCC*, 398 F. 3d 1222, 1234 (10<sup>th</sup> Cir. 2005) ("*Qwest II*").