



## SUMMARY

More than ten years after the 1996 Act, less than six percent of all telephone lines are served by competitors using their own loop facilities. While facilities-based competition is well established in most of the markets regulated by the Commission (*e.g.*, long-distance telephony, wireless service, video programming, broadband Internet), until recently the market for local telephone service seemed to be impervious to any competition. With the recent development of IP-based services, cable operators have begun to attack the LECs' stranglehold on the local phone market. Cable's entry into the telecom market already has produced tangible savings for consumers, and the overall amount of savings will continue to grow as cable operators continue to expand their telephone offerings.

As the Commission decides how to proceed with intercarrier compensation reform, it should keep in mind the increasingly important role that cable operators play in providing competition in the market for voice services. To the extent the Commission reforms the intercarrier compensation system in a way that reduces and controls costs for competitors (*e.g.*, by facilitating interconnection and transit arrangements and reducing complexity), the benefit to consumers from this developing facilities-based competition will be even greater than anticipated. Conversely, if the Commission adopts the flawed Missoula Plan, the costs of entry will increase and consumers will benefit less than they should from the development of facilities-based competition.

As NCTA explains in these comments, the Missoula Plan does not meet any of the key goals the Commission identified in connection with intercarrier compensation reform. Virtually every component of the plan – the definitions, the transit provisions, the interconnection rules, the universal service provisions – is designed to favor incumbents over competitors. The

Missoula Plan is not competitively neutral and it will hinder, rather than promote, facilities-based competition.

The Commission should set aside this complicated, unbalanced proposal and instead focus on the core interconnection and transit issues that continue to pose a barrier to competition. In particular, NCTA believes the Commission can promote facilities-based competition by clarifying the rights and obligations of parties with respect to transit service arrangements, including (1) an obligation that ILECs continue to provide transit service at cost-based rates pursuant to Section 251 and include transit terms in Section 252 interconnection agreements; (2) traffic thresholds to encourage direct connections among non-ILECs where efficient; and (3) carrier identification requirements to combat the problem of “phantom” traffic. NCTA suggests that this be the first step the Commission takes in reforming the intercarrier compensation regime, before it undertakes to resolve the more difficult issues associated with equalizing intercarrier compensation rates.

**TABLE OF CONTENTS**

SUMMARY ..... i

INTRODUCTION ..... 1

I. FACILITIES-BASED COMPETITION FROM CABLE OPERATORS IS PRODUCING SIGNIFICANT CONSUMER BENEFITS. .... 4

II. THE MISSOULA PLAN SHOULD NOT BE ADOPTED BECAUSE IT WILL HINDER FACILITIES-BASED COMPETITION..... 6

    A. The Missoula Plan Is Neither Competitively Neutral Nor Technologically Neutral. ....7

    B. The Missoula Plan Harms Competition By Deregulating Transit Services Prematurely. ....10

    C. The Interconnection Rules Contained In The Missoula Plan Are Unreasonably Discriminatory. ....14

    D. The Proposed “Restructure Mechanism” Will Harm Consumers And Competitors.....18

    E. The Missoula Plan Does Not Clearly Address the Rights and Obligations of IP-Based Communications Providers. ....20

III. THE CABLE INDUSTRY SUPPORTS RATIONAL INTERCARRIER COMPENSATION REFORM..... 22

    A. The Commission Should Clarify the Rights and Obligations of Parties With Respect to Transit Arrangements.....22

        1. The Commission should require ILECs to continue providing transit service pursuant to Section 251 interconnection agreements. ....23

        2. The Commission should adopt technical standards to encourage direct connections where efficient.....25

        3. The Commission should adopt limited signaling rules to combat phantom traffic. ....26

    B. The Commission Should Equalize Termination Charges In A Competitively And Technologically Neutral Manner. ....28

        1. The Commission should require that providers charge the same termination rate for all traffic.....29

2.	The Commission Should Provide Limited Transitional Support For Rural Companies. ....	31
	CONCLUSION.....	33

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

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

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments on the “Missoula Plan” for intercarrier compensation reform.<sup>1</sup> NCTA strongly supports efforts to reform the current intercarrier compensation system and in these comments we propose a number of steps the Commission should take to achieve the objectives it identified in the *Intercarrier Compensation FNPRM*.<sup>2</sup> We also explain that the Missoula Plan will not achieve these objectives and therefore it should not be adopted.

**INTRODUCTION**

NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation’s largest broadband provider of high-speed Internet access after investing \$100 billion over ten years to build a two-way

---

<sup>1</sup> See Public Notice, *Comment Sought on Missoula Intercarrier Compensation Reform Plan*, CC Docket No. 01-92, DA 06-1510 (rel. July 25, 2006); Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92, at 2 (filed July 24, 2006) (attaching the Missoula Plan) (Missoula Plan).

<sup>2</sup> *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (*Intercarrier Compensation FNPRM*).

interactive network with fiber optic technology. Cable companies also provide state-of-the-art residential telephone service to over seven million American homes and are committed to making telephone services available nationwide.

As cable operators have expanded their entry into the telecommunications market with state-of-the-art Internet Protocol (IP) networks and innovative service offerings, they have been confronted with a regulatory regime that has not always kept pace with market developments. In no area is this truer than intercarrier compensation. As the Commission recognized last year in its *Inter-carrier Compensation FNPRM*, the current intercarrier compensation regime “creates distortions in the marketplace at the expense of healthy competition.”<sup>3</sup>

In the *Inter-carrier Compensation FNPRM*, the Commission identified three primary objectives that would guide its consideration of intercarrier compensation reform. The first goal was economic efficiency. The Commission stated that any new approach to intercarrier compensation should “encourage the efficient use of, and investment in, telecommunications networks.”<sup>4</sup> The goal of such investment is the development of facilities-based competition, which is “one of the Commission’s most important policies.”<sup>5</sup> Second, the Commission emphasized the importance of universal service. The Commission said that it would be “particularly receptive” to proposals that offer increased choices and lower rates for rural consumers.<sup>6</sup> Third, the Commission said that any new regime should strive for competitive and

---

<sup>3</sup> *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4687, ¶ 3.

<sup>4</sup> *Id.* at 4701, ¶ 31.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 4702, ¶ 32.

technological neutrality. By this it meant that “similar functions should be subject to similar cost recovery mechanisms.”<sup>7</sup>

The cable industry supports these goals completely and is committed to working with the Commission to achieve them in a manner that meets the needs of consumers and competitors.<sup>8</sup> As a general matter, NCTA believes the Commission should, whenever possible, rely on a competitive marketplace to meet the needs of consumers and that it should direct its efforts to promoting facilities-based competition. Where market power continues to exist, however, as it does in the market for voice services, NCTA supports narrowly focused regulation.

Consistent with this philosophy, NCTA proposes a number of steps the Commission can take in this proceeding that will promote both facilities-based competition and rational intercarrier compensation reform. In particular, we urge the Commission to: (1) establish explicit rights and obligations for parties with respect to transit arrangements; and (2) equalize termination rates in a competitively and technologically neutral manner.

NCTA believes that these incremental steps will be much more effective than the Missoula Plan in achieving the objectives the Commission identified in the *Inter-carrier Compensation FNPRM*. The Missoula Plan would make it more difficult and more expensive for cable operators to compete in the telecommunications market and therefore would reduce the substantial consumer benefits that otherwise would develop as competition increases. Accordingly, NCTA believes the Missoula Plan should not be adopted.

---

<sup>7</sup> *Id.* at 4702, ¶ 33.

<sup>8</sup> For example, while NCTA supports the goal of universal service, we do not believe that goal should be achieved by expanding the size of federal universal service support mechanisms as proposed in the Missoula Plan.

**I. FACILITIES-BASED COMPETITION FROM CABLE OPERATORS IS PRODUCING SIGNIFICANT CONSUMER BENEFITS.**

In reviewing the Missoula Plan, it is important for the Commission to consider the emerging role that cable operators play in providing competition in the market for voice services. Any changes in the regulation of intercarrier compensation that undercut this new competition would be a significant setback for federal telecommunications policy and for consumers. Yet wholesale adoption of the Missoula Plan would mean just that.

For years the Commission has recognized that competition among facilities-based providers is the best way to ensure that consumers are provided with the services they want at reasonable prices.<sup>9</sup> While facilities-based competition is well established in most of the markets regulated by the Commission (*e.g.*, long-distance telephony, wireless service, video programming, broadband Internet),<sup>10</sup> until recently the market for local telephone service seemed to be impervious to any competition. More than a decade after Congress opened the local wireline market to competition, competitors to the incumbent LECs (ILECs) have captured only

---

<sup>9</sup> See, *e.g.*, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, FCC 06-142 at ¶ 3 (rel. Sept. 29, 2006) (11<sup>th</sup> Annual CMRS Report) (“[T]he record indicates that competitive pressure continues to drive carriers to introduce innovative pricing plans and service offerings, and to match the pricing and service innovations introduced by rival carriers.”); *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd at 2503, 2506, ¶ 5 (2006) (12<sup>th</sup> Annual Video Report) (“Competition in the delivery of video programming services has provided consumers with increased choice, better picture quality, and greater technical innovation.”).

<sup>10</sup> See, *e.g.*, *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995); 11<sup>th</sup> Annual CMRS Report at ¶ 2 (three or more providers in areas covering 98 percent of the population); 12<sup>th</sup> Annual Video Report, 21 FCC Rcd at 2506, ¶ 5 (“[A]lmost all consumers have the choice between over-the-air broadcast television, a cable service, and at least two DBS providers.”); *Appropriate Framework for Broadband Access over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14856, ¶ 3 (“[T]he record before us demonstrates that the broadband Internet access market today is characterized by several emerging platforms and providers, both intermodal and intramodal, in most areas of the country.”).

18 percent of the market, and only 13 percent of the market for residential customers.<sup>11</sup>

Facilities-based competition is even more tenuous, with less than six percent of all lines served by competitors using their own loop facilities.<sup>12</sup>

With the recent development of IP-based services, cable operators have begun to attack the LECs' stranglehold on the local phone market. Cable operators currently provide voice service to over seven million homes. While that number is increasing every day, it is still dwarfed by the number of homes served by the incumbent LECs.

Cable's entry into the telecom market has produced tangible savings for consumers. According to a recent J.D. Power report, cable phone customers save an average of \$11.19 per month on their phone bills.<sup>13</sup> Based on the projected growth of cable phone services, MiCRA recently projected that the anticipated consumer benefit from competition over the next five years could total more than \$100 billion.<sup>14</sup> These savings include direct savings to consumers that switch to cable phone services, as well as indirect savings that result from the competitive response of incumbent LECs.<sup>15</sup>

The consumer benefits that result from facilities-based competition dwarf the supposed benefits of the Missoula Plan. The Missoula Plan proponents assert that shifting ILEC cost recovery from per-minute carrier charges to flat-rated consumer charges will produce from \$1-3

---

<sup>11</sup> See *Local Telephone Competition: Status as of December 31, 2005* at Table 1, Table 2 (Industry Analysis and Technology Division, Wireline Competition Bureau 2006) (2006 Local Competition Report).

<sup>12</sup> 2006 Local Competition Report at Table 1 (175 million total lines); Table 3 (10 million lines served by competitive loop facilities).

<sup>13</sup> Press Release, *J.D. Power and Associates Reports: Cable Companies Dominate Customer Satisfaction Rankings for Local and Long Distance Telephone Service* (July 12, 2006).

<sup>14</sup> See *Consumer Benefits from Cable-Telco Competition*, Microeconomic Consulting and Research Associates (available at [www.micradc.com/news/news/html](http://www.micradc.com/news/news/html)) (MiCRA Report) at 20.

<sup>15</sup> MiCRA Report at 20.

in monthly savings per line.<sup>16</sup> Even if that figure is correct (and there is ample reason to believe it is overstated),<sup>17</sup> it is relatively modest when compared to the savings that result from the introduction of facilities-based competition.

This is not to say that the Commission should not undertake to reform the intercarrier compensation system. Rather, our point is that reform should be done in a manner that promotes, rather than hinders, facilities-based competitors. In other words, the Commission should act in ways that maximize consumer savings and avoid actions that cancel out those benefits. To the extent the Commission reforms the intercarrier compensation system in a way that reduces and controls costs for competitors (e.g., by facilitating interconnection and transit arrangements and reducing complexity), the benefit to consumers from facilities-based competition will be even greater than anticipated.<sup>18</sup> Conversely, if the Commission adopts the flawed Missoula Plan, the costs of entry will increase and consumers will benefit less than they should from the development of facilities-based competition.

## **II. THE MISSOULA PLAN SHOULD NOT BE ADOPTED BECAUSE IT WILL HINDER FACILITIES-BASED COMPETITION.**

---

NCTA believes the Missoula Plan fails to achieve any of the goals identified by the Commission in the *Inter-carrier Compensation FNPRM* and that it is not in the best interest of

---

<sup>16</sup> Missoula Plan, Exhibit 2 at 4-5 (projecting \$2.63 in monthly savings per wireline household and \$1.17 in monthly savings per wireless customer).

<sup>17</sup> The economic analysis provided with the Missoula Plan is based on the assumption that all access charge reductions will be passed through to end users in the form of lower retail rates. *Id.* at 2. But the analysis fails to account for the “all distance” nature of competitive offerings. Because competitors typically provide both local and long distance service, the benefit of reduced access charge payments on long distance calls made by their customers will be offset by reduced access charge revenues from long distance calls made to their customers. As a result of this offsetting revenue loss, it is simply incorrect to assume that the access charge reductions proposed under the Missoula Plan are pure “savings” that competitors can pass through to consumers. Furthermore, if competitors are unable to reduce rates as a result of the plan, incumbents will have no incentive to do so either.

<sup>18</sup> MiCRA Report at 12, n.22.

consumers. It is primarily intended to preserve (if not increase) incumbent LEC revenues and it will hinder, rather than promote, facilities-based competition. The fact that all but two of the plan's supporters are incumbent LECs (or affiliated with incumbent LECs) provides strong evidence that the proposal in its current form is not intended to promote competition.<sup>19</sup> The Commission should set aside this complicated, unbalanced proposal and instead focus on the core interconnection and transit issues that continue to pose a barrier to competition.

**A. The Missoula Plan Is Neither Competitively Neutral Nor Technologically Neutral.**

As the Commission explained in the *Intercarrier Compensation FNPRM*, “existing compensation regimes are based on jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services. . . . These artificial distinctions distort the telecommunications markets at the expense of healthy competition.”<sup>20</sup> In any new regime, the Commission made clear that “[s]imilar types of functions should be subject to similar cost recovery mechanisms. . . . To the extent a proposed regime would preserve distinctions between types of carriers and types of traffic, such distinctions should be based on legitimate economic or technical differences, not artificial regulatory distinctions.”<sup>21</sup>

Judged against this standard, the Missoula Plan is a complete failure – it maintains distinctions between local and long distance calls;<sup>22</sup> it maintains distinctions between LECs,

---

<sup>19</sup> Other than Global Crossing and Level 3 Communications, every company that supports the plan is an incumbent LEC or affiliated with an incumbent LEC. Neither Global Crossing nor Level 3 compete with incumbent LECs for residential customers as cable operators do and therefore they are unaffected by many of the harmful provisions that NCTA has identified.

<sup>20</sup> *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4693-94, ¶ 15.

<sup>21</sup> *Id.* at 4702, ¶ 33.

<sup>22</sup> Missoula Plan at 26-30.

wireless carriers, and VoIP providers;<sup>23</sup> and it creates unsupportable distinctions between incumbents and competitors.<sup>24</sup> Maintaining all these irrational distinctions makes absolutely no sense given the way the marketplace has developed. Cable operators generally offer retail services that do not distinguish between local and long distance calls, or between interstate and intrastate. Increasingly the same is true for wireless carriers and LECs as well, particularly following the recent Bell-IXC mergers. Thus, there is no “legitimate economic or technical” reason to make those types of distinctions between traffic. As the Commission already has recognized, this is precisely what it should avoid if it wants to promote facilities-based competition.<sup>25</sup>

Even worse than the illogical distinctions between types of companies and types of traffic are the lengths to which the Missoula Plan provides favored treatment to incumbent LECs. For example, as we explain in Sections II.B and II.C, the proposed rules regarding transit and interconnection plainly are designed to make it more difficult and more expensive for competitors to interconnect and exchange traffic with incumbents and third-party providers that also “home” on the ILEC’s tandem. The disparate treatment of incumbents and competitors is even more pronounced with respect to rural LECs. Unlike other providers covered under the plan, rural LECs would have virtually no transport obligations and they would receive the lion’s

---

<sup>23</sup> *Id.*

<sup>24</sup> The Missoula Plan proposes to create three “tracks” with varying obligations. Providers in Tracks 2 and 3 generally receive more favorable treatment than providers in Track 1. Although incumbent LECs are sorted into the three tracks based on the size of the markets they serve, competitive providers all are placed in Track 1 without regard to the size of the markets they serve. This is one of many examples where the plan provides more generous treatment to incumbents, which is completely at odds with the principles underlying Section 251 of the Act, which imposes more burdensome regulation on incumbents due to their market power.

<sup>25</sup> *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4696, ¶ 21 (“[I]n a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications.”).

share of the additional funding made available through the Restructure Mechanism, as we explain in Sections II.C and II.D.

The plan also includes a so-called “incentive regulation” option for rate-of-return ILECs. Under this option, a rate-of-return LEC could earn as much as possible (rather than the current prescribed rate of return of 11.25 percent), but it would still have the right to ask the FCC for rate increases if its rate-of-return fell below 10.25 percent.<sup>26</sup> Needless to say, cable operators and other facilities-based competitors must operate with no such guarantee of profitability.

Not only would the Missoula Plan add rules that favor ILECs, it also would eliminate existing rules that promote competitive neutrality. For example, the Commission’s rules currently allow a competitive LEC (CLEC) to charge the same access rates as the ILEC with which it competes, even in rural areas.<sup>27</sup> In contrast, under the Missoula Plan, a Track 1 CLEC competing with a Track 3 ILEC would be required to charge a lower rate than the ILEC.<sup>28</sup> Moreover, the ILEC would be eligible for additional funding from the Restructure Mechanism (discussed in section III.D below), while the CLEC would not. The effect of this and other disparate treatment called for in the Missoula Plan is that competitors would be forced to recover substantially more of their costs from their end users, making it more difficult to price services

---

<sup>26</sup> Missoula Plan at 82.

<sup>27</sup> 47 C.F.R. § 61.26(b).

<sup>28</sup> Compare Missoula Plan at 8-9 (Track 1 terminating rates) with Missoula Plan at 18 (Track 3 terminating rates). Although it is not entirely clear from the text of the plan, NCTA also is concerned that this disparity may apply with respect to reciprocal compensation. Under the Missoula Plan, a CLEC may charge the same reciprocal compensation rate as an ILEC only if it provides “comparable functions.” Missoula Plan at 36. Under current Commission rules, however, a CLEC may charge the ILEC’s “tandem rate” for termination if its switch serves a geographic area comparable to the area served by the ILEC tandem, and the Commission specifically rejected the use of a test based on functional equivalence. See *Cost-Based Terminating Compensation for CMRS Providers*, 18 FCC Rcd 18441, 18448, ¶ 18-20, *aff’d SBC v. FCC*, 414 F.3d 486 (3d Cir. 2005).

competitively and reducing the benefit to consumers from the development of facilities-based competition.

**B. The Missoula Plan Harms Competition By Deregulating Transit Services Prematurely.**

In the *Intercarrier Compensation FNPRM*, the Commission recognized that “indirect interconnection via a transit service provider is an efficient way to interconnect when carriers do not exchange significant amounts of traffic.”<sup>29</sup> It also acknowledged that “without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.”<sup>30</sup> Given the importance of transit service, the Commission asked dozens of questions on whether regulation is needed, and if so, the specific requirements that should be imposed and the legal basis for imposing them.

As noted above, NCTA generally favors a deregulatory environment. With respect to transit service, however, deregulation clearly would be detrimental to the development of facilities-based competition because of the ILECs’ continuing market dominance for this essential service.

A local service provider must be able to deliver calls to, and terminate calls from, every other provider in each of its local calling areas. As a result of the dominant position that incumbent LECs possess in virtually every geographic area, most of the traffic that a new entrant exchanges will be with the incumbent LEC, and a much smaller volume of traffic will be exchanged with other providers in that service area. If transit service were unavailable, a competitive service provider would have to directly connect with every ILEC, CLEC and CMRS

---

<sup>29</sup> *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4740, ¶ 126.

<sup>30</sup> *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4740, ¶ 125.

provider in each local market before it could even begin to deploy services. As the Commission has recognized, transit is the only practical and economical way for a competitive carrier to originate and terminate calls with all other providers because constructing such a large number of direct connections for often minimal amounts of traffic is cost prohibitive and immensely inefficient.

Unfortunately, incumbent LECs currently face scant competition in the market for transit services.<sup>31</sup> As a result of this limited competition, cable operators frequently find themselves at the mercy of their main competitors for this crucial function. While increased competition might one day develop in this market, today incumbent LECs are uniquely positioned to provide this service and they make every effort to leverage this dominant position to disadvantage their competitors. AT&T, for example, has argued that the Commission has no authority to require ILECs to provide transit service pursuant to Section 251 interconnection agreements.<sup>32</sup> Similarly, AT&T and other incumbent LECs have attempted to remove transit service from their interconnection agreements with competitors, forcing competitors to seek arbitration to preserve what had been a standard provision in these agreements.<sup>33</sup>

The Missoula Plan purports to regulate transit service, but in fact it has the opposite effect. As an initial matter, the Missoula Plan subjects transit services to commercial

---

<sup>31</sup> In a separate proceeding, Neutral Tandem stated that it is “the industry’s only independent tandem services provider.” *Petition for Interconnection of Neutral Tandem, Inc.*, WC Docket No. 06-159, Petition of Neutral Tandem at 2 (filed Aug. 2, 2006). NCTA is not aware of any other competitive transit providers that operate on a nationwide basis, and we note that even Neutral Tandem’s operations are fairly limited at this point in time.

<sup>32</sup> See, e.g., *Petition for Interconnection of Neutral Tandem, Inc.*, WC Docket No. 06-159, AT&T Reply Comments at 8-9 (filed Sept. 25, 2006).

<sup>33</sup> For example, Cox recently has been forced to arbitrate this issue with AT&T in Arkansas, Kansas, and Oklahoma.

negotiations. The effect of this proposal would be to eliminate the Section 252 negotiation and arbitration rights and timelines, thereby allowing an ILEC to delay negotiations without limits and impose onerous terms and conditions on a new entrant. Without recourse to the state arbitration process provided for in Section 252, a new entrant might be forced to either delay its market entry or accept transit terms that make it economically difficult for it to compete. Further, by placing transit service outside the scope of state commission review and approval under Section 252, there is a risk that “commercial” negotiations could lead to highly discriminatory arrangements.

In the second year of the plan, transit rates would be capped at a \$.0025 per minute.<sup>34</sup> That rate is roughly 2-5 times higher than the rate that many companies currently pay for transit service.<sup>35</sup> By way of comparison, the Public Utility Commission of Texas recently ordered AT&T to provide transit in interconnection agreements at a rate of \$0.00096 per minute and the Michigan Public Service Commission ordered AT&T to offer transit service at a cost-based rate of \$0.00045 per minute.<sup>36</sup>

The Missoula Plan also allows transit providers to double the rate charged for transit service – to an exorbitant \$.005 per minute – if carriers send just 400,000 minutes of traffic per month between two switch points. Although NCTA is not opposed to establishing a threshold at

---

<sup>34</sup> Missoula Plan at 51.

<sup>35</sup> For example, the transit rate charged by AT&T in California is \$0.000453 per minute with a charge of \$0.000629 per call; AT&T charges \$0.000953 per minute in Kansas; Qwest charges \$0.00134 per minute in Arizona; Verizon charges \$0.000662 per minute in Virginia.

<sup>36</sup> *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821, Arbitration Award at 23 (Tex. PUC Feb. 23, 2005); *In the Matter, on the Commission’s Own Motion, to Review the Costs of Telecommunications Services Provided by SBC Michigan*, Case No. U-13531, Final Order at Exhibit A, p.11 (Mich. PSC January 25, 2005).

which a transit provider could require customers to establish direct connections with other providers or pay a higher transit rate, 400,000 minutes is equivalent to approximately two DS1s of traffic, which is an unreasonably low threshold at which to allow incumbent LECs to impose such a choice on competitors. A reasonable basis for direct interconnection between two carriers would be the exchange of traffic that would fill a DS3 transport facility, which provides 28 DS1s of capacity.<sup>37</sup>

Not only should the Commission reject the unreasonably low threshold proposed under the Missoula Plan, it also should reject the proposal to allow the doubling of transit rates when that threshold is reached. Although NCTA agrees that there should be an economic incentive to encourage direct connections where efficient, allowing ILECs to *double* what is already an unreasonably high rate is not justified. A more reasonable economic incentive would be to permit the transit provider to increase its currently charged transit rate by 20 percent, so long as such rate is set no higher than \$0.001 per minute, when traffic volume exceeds the established threshold.

The Missoula Plan also provides that after three years its proposed rate caps would disappear completely for transit service provided within an MSA.<sup>38</sup> Once that happens, LECs will be able to charge their competitors whatever rate they want for this critical service. This deregulation of transit services is completely unjustified given the dearth of competition that incumbent LECs face for these services. The lack of any meaningful constraint on transit rates – either through regulation or competition – will result in enormous cost increases for cable operators and other facilities-based competitors. These increases undermine the Commission’s

---

<sup>37</sup> As explained in Section III.A below, Cox’s compromise threshold of ten DS1s also is a much more reasonable proposal than the one contained in the Missoula Plan.

<sup>38</sup> Missoula Plan at 52.

goal of competitive entry. The proper approach to transit, as we explain in more detail in Section III.A below, is to require that it continue to be included in interconnection agreements at cost-based rates determined by state commissions, with a reasonable traffic volume threshold in a particular location for requiring direct interconnection.

**C. The Interconnection Rules Contained In The Missoula Plan Are Unreasonably Discriminatory.**

The Commission recognized in the *Inter-carrier Compensation FNPRM* that some of the most contentious issues among telecommunications providers involve the physical interconnection of networks and the financial responsibility for transport between networks.<sup>39</sup> The Commission found, therefore, that any proposal should have “clear rules regarding how and where carriers interconnect and the allocation of responsibilities for any facilities needed to connect two networks.”<sup>40</sup>

NCTA agrees that there is room for improvement in the current rules governing interconnection. As with terminating compensation, interconnection practices vary based on the type of traffic and type of companies involved. Too often, the consequence of this disjointed regime is that traffic is not exchanged as efficiently as it could be. This proceeding offers the Commission the opportunity to move to a simpler interconnection regime, where competitors can identify one or more points of interconnection (POIs) on an incumbent’s network in a LATA and send all types of traffic to those points for termination or transiting by the ILEC.

The Missoula Plan proposes an interconnection regime based on the “edge” concept, in which every provider must identify at least one point on its network in a LATA where it will

---

<sup>39</sup> *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4727-28, ¶ 91.

<sup>40</sup> *Id.* at 4702-03, ¶ 34.

accept traffic from any other provider.<sup>41</sup> The originating provider generally is responsible for arranging to deliver its traffic to the edge established by the terminating carrier and is financially responsible for the cost of those arrangements.<sup>42</sup> Although these general principles are straightforward, the plan provides for numerous variations that are tied to its three different tracks, and therefore the rights and obligations of any particular provider often depart from these principles.

NCTA has serious concerns with interconnection regime proposed under the Missoula Plan. First, by allowing an ILEC to designate its preferred point of interconnection, and impose transport charges if a competitor chooses to interconnect at a different point (or points) on the ILEC network, the Missoula proposal changes the ground rules for interconnection in an anticompetitive manner. Under Section 251(c)(2), a CLEC may choose to interconnect at any technically feasible point on an ILEC's network and need only establish a single POI in each LATA, including a meet-point between the carriers' networks.<sup>43</sup> As the United States Court of Appeals for the Third Circuit explained, "the CLEC cannot be required to interconnect at points where it has not requested to do so."<sup>44</sup>

While the Missoula Plan acknowledges that a CLEC has the right under Section 251(c)(2) to choose where it wants to interconnect with an ILEC, the plan subverts this pro-competitive statutory scheme by authorizing ILECs to impose additional charges when a CLEC

---

<sup>41</sup> Missoula Plan at 41 (general obligation to establish an edge), 46 (allowing an Alaska ILEC to unilaterally designate a tandem switch located outside the ILEC's local calling area as an edge).

<sup>42</sup> *Id.* at 30, 41.

<sup>43</sup> See 47 U.S.C. § 251(c)(2); See *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. D/B/A Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, 15 FCC Rcd. 18354, 18390 (2000) (*Texas 271 Order*).

<sup>44</sup> *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 518 (3d Cir. 2001).

actually exercises that right.<sup>45</sup> Allowing an ILEC to charge extra when a CLEC chooses a POI (or multiple POIs) at locations not selected by the ILEC is just as harmful to competition as permitting the ILEC to require POIs not selected by the CLEC because both strategies impose unnecessary costs on competitors.<sup>46</sup> Such an approach is inconsistent with the requirements of section 251(c)(2) and should not be adopted by the Commission.<sup>47</sup>

Second, the plan only applies these interconnection rules to “non-access” traffic, while access traffic continues to be subject to interconnection requirements that are contained in LEC tariffs.<sup>48</sup> As a result, even as termination rates for access and non-access traffic are unified, terminating carriers may still be able to require different types of traffic to be delivered on separate trunks to separate locations. This has the effect of preventing carriers from delivering traffic in the most efficient manner possible and it imposes significant costs on competitors. Preserving this aspect of the current regime is a lost opportunity to promote more efficient arrangements.

Third, the proposed rural transport rules are highly discriminatory. While the plan generally places financial responsibility for delivering traffic on the originating provider, that is

---

<sup>45</sup> Missoula Plan at 30, 42.

<sup>46</sup> *MCI v. Bell Atlantic*, 271 F.3d at 517 (requiring “additional connections at an unnecessary cost to the CLEC[] would be inconsistent with the policy behind the Act.”).

<sup>47</sup> Under the Commission’s existing rules, a competitor has the option to interconnect at only one technically feasible point in each LATA. *Texas 271 Order*, 15 FCC Rcd at 18390. While NCTA supports the preservation of the single point per LATA rule, the Commission could inadvertently impede deployment of competitive facilities if it does not affirm that the single point is available as a minimum point of interconnection, from the competitor’s perspective. *Id.* That is, a competitor must be able to interconnect at multiple ILEC end offices. This is wholly consistent with Section 251(c)(2)(B), which allows interconnection at any technically feasible point, and Commission precedent, which allows interconnection where it is most efficient, from the competitor’s perspective. *Id.* Interconnection at multiple end office satisfies both these requirements, particularly given that it actually reduces the ILEC’s transport costs and extends competitive networks further into a service area.

<sup>48</sup> Missoula Plan at 41. This non-uniform application of the interconnection rules underscores that these rules are not focused on rationalizing the current regime, but instead are being used to further foreclose competitive network options by protecting incumbents.

not the case when a Track 1 carrier (e.g., any cable operator) exchanges traffic with a Track 3 carrier (e.g., any rural LEC). In this scenario, the plan proposes to place almost the entire cost of the interconnection arrangement on the Track 1 carrier.<sup>49</sup> In situations where the Track 1 carrier serves the same geographic area as the Track 3 carrier, this result is totally unjustified and obviously anticompetitive. The Commission should not have separate “tracks” for interconnection; it should impose symmetrical interconnection and transport obligations on all carriers.<sup>50</sup>

The discriminatory nature of the rural transport rules is compounded by the “incentive regulation” component of the Missoula Plan. One likely option for a competitor that is responsible for transport to and from a rural LEC’s end office is to purchase special access service from the rural LEC. But under the “incentive” regulation plan, rate-of-return LECs would no longer be limited to cost-based rates for special access services. Instead, the prices of those services would be allowed to rise as much as ten percent per year.<sup>51</sup>

Finally, there is significant potential for these new interconnection rules to interfere with existing negotiated arrangements. By giving carriers the ability to demand different interconnection arrangements than they have agreed to in the past, the plan creates the potential for a new round of disputes between providers. This problem is particularly acute in areas served by Track 3 companies because of the unreasonably favorable treatment of those companies under the proposed interconnection rules.

---

<sup>49</sup> Missoula Plan at 33.

<sup>50</sup> To the extent it is appropriate to modify a rural carrier’s obligations under the Act, Section 251(f) may be used by such a carrier to do so.

<sup>51</sup> Missoula Plan at 82.

**D. The Proposed “Restructure Mechanism” Will Harm Consumers And Competitors.**

The Missoula Plan proposes to offset some access charge reductions required for incumbent LECs with money from a so-called “Restructure Mechanism.”<sup>52</sup> NCTA believes that the proposed Restructure Mechanism is deeply flawed. Despite the name, the Restructure Mechanism is exactly like a universal service fund, except that it is not open to competitive providers. This is a clear violation of federal law and completely at odds with the Commission’s goal of competitive neutrality.<sup>53</sup> While it is important to maintain a workable federal universal service fund for areas that otherwise would not have service at reasonable rates, the Commission should resist any outcome that would create artificial barriers to competition motivated solely by efforts to protect incumbent LEC revenues from being reduced due to reform.

The discriminatory nature of the proposed Restructure Mechanism discourages competition. Under the plan, competitors must match the access charge reductions of incumbents (and in some cases charge even less),<sup>54</sup> but without the benefit of the offsetting funds from the Restructure Mechanism. The effect of this disparate treatment is that competitors must recover more of their costs from their end users than incumbents do. For a cable operator in a low-density, high-cost area, this may be the difference between a business case that supports competitive provision of voice service and one that does not.

Moreover, the entire premise that incumbent LECs must be compensated dollar-for-dollar for any access charge reductions (either from the Restructure Mechanism or through increased

---

<sup>52</sup> Missoula Plan at 64-76.

<sup>53</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-04, ¶¶ 45-52 (1997) (establishing competitive neutrality as a principle to govern the distribution of universal service support).

<sup>54</sup> See Section II.A above.

Subscriber Line Charges) is dubious from the start. In the five years since the last major access charge reform effort (the CALLS plan), incumbent LECs have developed numerous alternative revenue streams (such as long distance service, DSL service, and video services) to recover the costs of their networks. In a marketplace where companies compete by providing packages of multiple services, providing the incumbent with access to a revenue stream set-aside (i.e., the Restructure Mechanism) that is not available to competitors unfairly tips the scales against competitive entry.<sup>55</sup> As we explain more fully in section III.B.2 below, additional funding should be available to eligible providers in a service area *only* if the absence of support will have a detrimental impact on service availability or subscribership.

The proposed Restructure Mechanism is particularly ill-advised because it will perpetuate past revenue streams from access charges and transport that otherwise would be declining due to market forces. A variety of factors – including substitution of wireless calling for traditional long distance, the entry of nationwide residential competition by cable providers, and mergers between Bell companies and IXCs – are placing pressure on ILEC access revenues. This type of pressure is one of the benefits of an increasingly competitive marketplace. The Commission should resist any new universal service funding mechanism that would shelter ILECs from these market forces. Regardless of any universal service reform the Commission seeks to pursue, NCTA maintains that it is inappropriate to adopt any proposal that guarantees incumbent LEC access and transport revenues, especially at their *current* levels.

The final flaw in the proposed Restructure Mechanism is that it does nothing to curb the growth of the universal service fund – a key concern of regulators for a number of years. Instead, the Restructure Mechanism, as well as the two other new universal service mechanisms

---

<sup>55</sup> See *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4696, ¶ 21.

proposed in the plan – Non-Rural High-Cost Loop Support and Safety Valve II<sup>56</sup> – will increase the size of the fund, thereby distorting the competitive marketplace and imposing additional burdens on consumers. Obviously this is not an approach that is consistent with the goals established by the Commission.

**E. The Missoula Plan Does Not Clearly Address the Rights and Obligations of IP-Based Communications Providers.**

IP-based networks represent the future of telecommunications. The Commission recognized this trend two years ago in the *IP-Enabled Services NPRM*. As it said in that order, the “increasing deployment of broadband facilities therefore has prompted the development of services and applications that provide broader functionality and greater consumer choice at prices competitive to those of analogous services provided over the public switched telephone network (PSTN).”<sup>57</sup>

Since that time, the cable industry has proved the Commission right. Cable operators have introduced IP-based phone service throughout the country. While initial efforts focused on urban and suburban areas, many operators are poised to introduce IP-enabled voice services in rural areas as well. These new services are bringing new jobs to communities<sup>58</sup> and new choices (along with big savings) to consumers.

Cable operators are not the only ones taking advantage of the benefits of IP technology. Incumbent LECs also are transitioning to IP technology at a rapid pace. Verizon, for example, has been using packet switching technology to serve local business and consumer lines since

---

<sup>56</sup> Missoula Plan at 77-79.

<sup>57</sup> *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4866, ¶ 3 (2004).

<sup>58</sup> See, e.g., *Comcast to Expand in Maryland and Delaware*, Washington Business Journal (Sept. 1, 2006) (Comcast adding over 400 new jobs due to increased demand for bundled services).

2004.<sup>59</sup> Similarly, Embarq recently migrated its one millionth customer from a circuit-switched network to a packet-switched network.<sup>60</sup>

Given the obvious transition of the entire telecommunications industry to IP-based networks and services, any comprehensive intercarrier reform effort must consider what rules, if any, apply to the exchange of traffic between IP-based providers. Remarkably, nowhere in the hundreds of pages of documentation filed with the Missoula Plan is there even a single mention of the possibility that two IP-based providers might exchange voice traffic, let alone a proposal for how it should be treated.

The failure of the Missoula Plan to address the transition of LEC networks from circuit switching to packet switching, and the increasing significance of IP-to-IP traffic exchange, is a fundamental flaw of this supposedly “forward-looking” plan. For providers, like cable operators, that are using IP-based networks today, the Missoula Plan does not provide the “regulatory certainty” that its proponents claim because it is not clear whether calls they send to, or receive from, other IP-based networks are even covered by the plan. And as LECs increasingly transition to IP networks, this uncertainty will affect an increasingly large share of traffic.

Moreover, the Missoula Plan is unclear even with respect to types of IP traffic that it purports to address. While the obligation of IP-based providers to pay terminating compensation on calls they originate is prominently featured, nowhere in the plan is there any discussion of the compensation that applies when a call originates with a LEC (or wireless carrier) and terminates with an IP-based provider. If cable operators and other IP-based providers are expected to pay

---

<sup>59</sup> Press Release, *Verizon Begins Deploying Packet Switches to Provide Local Phone Service* (June 22, 2004).

<sup>60</sup> Press Release, *Embarq Reaches Packet Network Milestone* (August 22, 2006).

compensation when they originate calls, they certainly should be permitted to collect compensation when they terminate calls, regardless of the technology used. The Commission should recognize this right in this proceeding.

### **III. THE CABLE INDUSTRY SUPPORTS RATIONAL INTERCARRIER COMPENSATION REFORM.**

---

The cable industry fully agrees with the Commission's assessment that the current intercarrier compensation regime harms the development of efficient competition.<sup>61</sup> For that reason, cable has actively participated in efforts to reform that regime. The cable industry was represented in the negotiations that led to the Missoula Plan and in the Intercarrier Compensation Forum (ICF) negotiations before that. In addition, NCTA and a number of individual cable operators filed comments in response to the *Intercarrier Compensation FNPRM*.<sup>62</sup>

As explained above, the Missoula Plan would not be a sound way for the Commission to move forward with intercarrier compensation reform because it hinders, rather than promotes, facilities-based competition. Instead of adopting the Missoula Plan, NCTA believes that there are positive steps the Commission can take that both move toward a more rational intercarrier compensation regime and promote development of facilities-based competition, as discussed in the sections below.

#### **A. The Commission Should Clarify the Rights and Obligations of Parties With Respect to Transit Arrangements.**

The Commission acknowledged in the *Intercarrier Compensation FNPRM* that the availability of transit service provided by incumbent LECs is absolutely critical for

---

<sup>61</sup> *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4687, ¶ 3.

<sup>62</sup> *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the National Cable & Telecommunications Association (filed May 23, 2005); Comments of Cox Communications, Inc. (filed May 23, 2005); Comments of Time Warner, Inc. (filed May 23, 2005).

competitors.<sup>63</sup> NCTA believes the Commission can promote facilities-based competition by establishing a clear set of ground rules for transit service arrangements. Such rules should include: (1) an obligation that ILECs continue to provide transit service at cost-based rates pursuant to Section 251 and include transit terms in Section 252 interconnection agreements; (2) traffic thresholds to encourage direct connections among non-ILECs where efficient; and (3) carrier identification requirements to combat the problem of “phantom” traffic. NCTA proposes that the Commission establish this comprehensive set of rules for transit arrangements as a first step in reforming the intercarrier compensation regime, before undertaking to resolve the more difficult issues associated with equalizing rates.

**1. The Commission should require ILECs to continue providing transit service pursuant to Section 251 interconnection agreements.**

As explained in Section II.B above, the market for transit service is not competitive and not likely to become competitive in the foreseeable future. Given this lack of competition, the Missoula proposal to deregulate transit rates is completely inappropriate and undoubtedly will slow the development of facilities-based competition. In light of the importance of transit service to competitors and the absence of competition, the Commission can and should require incumbent LECs to provide transit service.

The Commission has clear authority to mandate the provision of transit service by incumbent LECs pursuant to Sections 251(b)(5) and 251(c)(2) of the Act. Section 251(b)(5) requires all LECs to “establish reciprocal compensation arrangements for the transport and termination of telecommunications” and Section 251(c)(2) imposes on incumbent LECs an obligation to provide interconnection “for the transmission and routing of telephone exchange

---

<sup>63</sup> *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4740, ¶ 125.

service and exchange access.”<sup>64</sup> Nothing in the statutory language of either provision suggests that the obligation applies only with respect to traffic that originates or terminates on the LEC’s own network.<sup>65</sup> Under these provisions, an incumbent LEC must permit direct interconnection for the transmission or routing of traffic to and from other networks; and it must enter into compensation arrangements for the transport and termination of such traffic to or from any provider with which it is interconnected.

Imposing an ongoing transit obligation on incumbent LECs pursuant to Sections 251(b)(5) and 251(c)(2) would promote facilities-based competition because it would ensure that the terms and conditions for transit service are contained in interconnection agreements. In addition, such an approach would continue to ensure a fair, cost-based pricing standard for transit service and the availability of a dispute resolution mechanism with state commissions. In contrast, the Missoula Plan proponents argue that the Commission has the legal authority to regulate transit under Sections 201 and 251(a).<sup>66</sup> Relying solely on these provisions, rather than Sections 251(b)(5) and 251(c)(2), would be far less effective because it would move transit service outside of the statutory pricing rules contained in Section 252(d)(2) and would raise questions about the appropriate forum for dispute resolution. As we explain in section II.B above, this would be devastating for the development of facilities-based competition.

---

<sup>64</sup> 47 U.S.C. §§ 251(b)(5), 251(c)(2).

<sup>65</sup> The proponents of the Missoula Plan acknowledge that Section 251(b)(5) “makes no distinctions among traffic on the basis of jurisdiction . . . or service definition.” Missoula Plan, Policy and Legal Overview, Att. A at 2.

<sup>66</sup> AT&T, the chief proponent of the Missoula Plan, has argued elsewhere that the Commission possesses such authority only with respect to existing transit service arrangements, and that it may not require any new transit arrangements. See *Petition of Neutral Tandem, Inc. for Interconnection*, WC Docket No. 06-159, AT&T Reply Comments at 9 (filed Sept. 25, 2006). AT&T’s interpretation of the statute draws no support from the language of either Section 201 or Section 251(a) and should be rejected.

**2. The Commission should adopt technical standards to encourage direct connections where efficient.**

In the *Intercarrier Compensation FNPRM*, the Commission noted that some incumbent LECs currently limit the availability of transit service to prevent traffic congestion and tandem exhaust.<sup>67</sup> The Commission sought comment on whether, if transit requirements are imposed, limitations are needed to ensure that carriers have appropriate incentives to make the most efficient choice between direct or indirect interconnection.<sup>68</sup>

In response to those and other questions, Cox submitted a detailed transit proposal, including technical guidelines for determining when direct connections should be required between two offices based on economically efficient interconnection principles and network interconnection arrangements that a rational carrier would employ.<sup>69</sup> Specifically, Cox proposed a regime in which the incumbent LEC transit provider could increase the transit rate for traffic that exceeds the equivalent of ten DS-1s between two switches.<sup>70</sup> In addition, once that trigger is met, both carriers would be obligated to enter into a direct interconnection agreement within 180 days.<sup>71</sup>

NCTA agrees that any regulatory regime the Commission adopts for transit service should include provisions to encourage providers to move traffic off ILEC tandem switches when it is efficient to do so. The Commission could either adopt specific rules governing this issue or it could require state commissions to address the issue in the context of arbitrations. In either

---

<sup>67</sup> *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4741-42, ¶ 131

<sup>68</sup> *Id.*

<sup>69</sup> Comments of Cox Communications, CC Docket No. 01-92, at 20.

<sup>70</sup> *Id.* at 22.

<sup>71</sup> *Id.*

case, the actual standards should balance the burden on ILEC tandem switches from providing transit service at regulated rates with the burden that would impose on competitive providers if the ILEC is able to raise transit rates or force direct connections prematurely. NCTA believes that the Cox proposal strikes this balance correctly.<sup>72</sup>

### **3. The Commission should adopt limited signaling rules to combat phantom traffic.**

In recent months, many LECs have noted an increase in the amount of traffic that arrives at the terminating switch with insufficient originating call information to identify the company responsible for paying any applicable terminating compensation or to determine which of the many possible termination rates (reciprocal compensation, intrastate access, interstate access) to charge. The problems associated with this unidentified or “phantom” traffic are experienced by all facilities-based providers.

In the *Intercarrier Compensation FNPRM*, the Commission solicited comment on whether additional billing or signaling requirements were needed to ensure that transit arrangements function properly. In response, the Commission has developed a substantial record on this set of issues, including three separate proposals. The first, supported by the Bell companies and CTIA, would require originating carriers to include certain signaling information (particularly the calling party number (CPN)) and would require intermediate carriers to pass any signaling information they receive to downstream carriers.<sup>73</sup> The second proposal, sponsored by

---

<sup>72</sup> As we explain in section II.B above, the Missoula Plan does not come close to striking the proper balance. The plan starts with a transit rate that is excessive, allows that rate to be doubled when traffic exceeds a miniscule level, and then deregulates the rate completely regardless of whether transit competition has developed. Missoula Plan at 51-52.

<sup>73</sup> See Letter from Donna Epps, Vice President-Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Apr. 4, 2006) (Bell Company Phantom Traffic Letter); Letter from Paul Garnett, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Apr. 19, 2006) (CTIA Phantom Traffic Letter).

USTelecom and the Midsize Carrier Coalition, includes these same requirements, but also requires the originating carrier to include the Jurisdictional Information Parameter (JIP) in the signaling stream and it requires an intermediate carrier to provide Exchange Message Interface (EMI) records to downstream carriers.<sup>74</sup> The Midsize Carrier Coalition proposal also includes an entirely new set of enforcement mechanisms. Finally, the Missoula Plan includes both a comprehensive phantom traffic proposal as part of the reform plan, as well as an interim proposal to be adopted in advance of the plan.<sup>75</sup>

As a threshold matter, NCTA believes the phantom traffic issue is best resolved by establishing uniform intercarrier compensation rates. Once all providers pay uniform rates – without regard to type or jurisdiction of traffic – there will be no incentive to hide or disguise traffic by stripping originating carrier data to avoid higher rates for certain calls. Regardless of how the Commission proceeds in reforming the intercarrier compensation system, however, some type of intercarrier payment obligation will continue to exist for the foreseeable future. Consequently, it is important that any provider that originates or participates in handling a call transmit CPN, which can be used by the terminating carrier to identify the originating service provider.

We agree with CTIA and the Bell companies that the additional requirements proposed by the Midsize Carrier Coalition are unnecessary and unduly burdensome.<sup>76</sup> The best way to resolve ILEC concerns about not collecting the “right” amount of terminating compensation is to have the same termination rate for all types of traffic, not to impose unnecessary requirements

---

<sup>74</sup> See Letter from Karen Brinkmann, Latham & Watkins, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Mar. 31, 2006).

<sup>75</sup> Missoula Plan at 56-61 (permanent rules); 61-63 (interim rules).

<sup>76</sup> See Bell Company Phantom Traffic Letter; CTIA Phantom Traffic Letter.

(such as the requirement to include the JIP in the signaling stream) that attempt to sort traffic to fit the various arbitrary classifications on which the current regime is based. Similarly, the elaborate enforcement mechanisms proposed by the Midsize Carrier Coalition and the Missoula Plan are totally unnecessary. Basic identification requirements alone, and not complex requirements based on outdated constructs, are sufficient to address this issue.

Finally, given the importance of transit arrangements, NCTA believes that the Commission should not address phantom traffic separate and apart from other transit-related issues, as advocated by the Missoula Plan proponents.<sup>77</sup> Rather, the best way to promote facilities-based competition is for the Commission to decide the rights and obligations of parties involved in transit arrangements in a comprehensive manner.

**B. The Commission Should Equalize Termination Charges In A Competitively And Technologically Neutral Manner.**

The Commission long has recognized that the fundamental problem with the current intercarrier compensation regime is the vast number of possible rates that apply for termination of traffic.<sup>78</sup> Equalizing such rates is the most obvious step the Commission can take to reform the current system – but also the most challenging, because it raises a variety of difficult legal and financial issues. In this section, NCTA explains why it is critical for the Commission to overcome these challenges.

---

<sup>77</sup> Missoula Plan at 61-62.

<sup>78</sup> *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4693-94, ¶ 15; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9616, ¶ 12 (2001).

**1. The Commission should require that providers charge the same termination rate for all traffic.**

As the Commission explained in the *Intercarrier Compensation FNPRM*, opportunities for regulatory arbitrage arise because each carrier charges different rates for call termination depending on the end points of the call, the technology used, and the regulatory status of the other carriers handling the call.<sup>79</sup> The solution to this problem is fairly obvious – the Commission should require that the rate that any provider charges for termination of traffic should be the same without regard to where the call originates, the type of network it originates on, or the type of company that delivers it for termination. From a cost perspective, terminating one minute of traffic is like terminating any other minute, regardless of the originating network or company type.

Achieving this solution involves three separate challenges: (1) equalizing rates across jurisdictions; (2) equalizing rates across services; and (3) equalizing rates across companies. To its credit, the Missoula Plan acknowledges the importance of equalizing interstate and intrastate access rates.<sup>80</sup> Unquestionably this is a positive step that should be a component of any intercarrier compensation reform effort that the Commission undertakes.

While equalizing interstate and intrastate access rates is a major step forward, standing alone it will not eliminate the opportunity for regulatory arbitrage that exists under the current regime. The other critical step the Commission must take is to equalize access charges for terminating toll calls and reciprocal compensation rates for terminating non-toll calls. The disparate treatment of access traffic and reciprocal compensation traffic, and the technology-

---

<sup>79</sup> *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4693-94, ¶ 15.

<sup>80</sup> Missoula Plan at 8-9 (Track 1 carriers), 15 (Track 2 carriers), and 18 (Track 3 carriers).

specific rules for distinguishing between the two, has been a continuing source of controversy since the 1996 Act was adopted. While the Missoula Plan acknowledges this problem, it proposes to solve it by continuing to allow some LECs to charge different rates for the two types of traffic and by adopting pages and pages of rules designed to better identify what traffic is subject to access charges and what traffic is subject to reciprocal compensation.<sup>81</sup>

On this issue, the Missoula approach is fundamentally flawed. Requiring carriers to charge the same termination rate for both types of traffic is a far better, and far simpler, solution to this problem. Among other benefits, equalizing rates for access and reciprocal compensation traffic is the best way to eliminate the effect of having different local calling areas for wireless and wireline traffic, as exists under the Commission's current rules. Equalizing these rates would also eliminate many of the problems that have vexed the Commission in terms of the proper treatment of ISP-bound traffic and VoIP services.<sup>82</sup>

Finally, with respect to equalizing rates between companies, there already is a general presumption under the Commission's rules that the terminating rates charged by competing carriers should be similar. This principle is reflected in Section 51.711(a) of the Commission's rules, which establishes a presumption that reciprocal compensation rates will be symmetrical, and in Section 61.26(b) of the Commission's rules, which generally caps CLEC rates at the rate level of the competing ILEC.<sup>83</sup>

---

<sup>81</sup> Missoula Plan at 51-52.

<sup>82</sup> As the Commission has noted in its decisions regarding ISP-bound traffic, any positive termination rate may create incentives for regulatory arbitrage. *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9184, ¶ 73 (2001). Accordingly, in equalizing termination rates, the more Commission reduces rates, the more it will reduce these arbitrage incentives.

<sup>83</sup> 47 C.F.R. §§ 51.711(a), 61.26(b).

This is one situation where the Commission's current rules achieve a competitively and technologically neutral result. These rules should not be changed as part of any intercarrier compensation reform plan adopted by the Commission. The Missoula Plan's failure to preserve the presumption of symmetrical charges between incumbents and competitors, at least for access charges,<sup>84</sup> is further evidence that this proposal is more concerned with preserving ILEC revenues than promoting competition or reducing arbitrage opportunities.

**2. The Commission Should Provide Limited Transitional Support For Rural Companies.**

Equalizing termination rates as proposed above will require many carriers to reduce their switched access charge rates and therefore raises the question of whether, and how, regulators should replace those revenues. As a general matter, NCTA believes that companies should rely on retail services to replace any lost access charge revenues. With limited exceptions, the Commission should be guided by the principle that service providers should recover network costs from their own customers and not from competitors. That is a principle that cable operators are prepared to follow and it should apply to the incumbent LECs with which cable operators compete.

NCTA acknowledges that requiring LECs to recover more of their network costs from their subscribers requires some deregulation of incumbent LEC retail services.<sup>85</sup> Many states already have deregulated many of the retail services offered by incumbent LECs. In some cases this deregulation extends to local exchange service, particularly when it is provided to business

---

<sup>84</sup> As noted in footnote 28 above, it is not entirely clear whether the Missoula Plan provides for symmetrical reciprocal compensation rates.

<sup>85</sup> Such deregulation is not appropriate for wholesale services. As NCTA explained in the previous section, facilities-based competitors are not able to offer competitive service without interconnecting with incumbent LEC networks and using incumbent LEC transit services.

customers or in a bundle with other deregulated services.<sup>86</sup> Similarly, the Commission generally does not regulate LEC retail rates for interstate services, including long distance services, DSL, and video services.

Because most ILEC retail services are not subject to rate regulation, the Commission should not assume that, absent further regulatory relief, LECs would be unable to recover the costs of their networks if access charge revenues are reduced. Rather, the Commission should establish alternative revenue opportunities (such as mandatory Subscriber Line Charge increases or additional universal service support) only where LECs can demonstrate that such relief is warranted.

NCTA recognizes that some parts of the country may be so expensive to serve that offsetting all lost access charge revenues with increased subscriber charges is not feasible. In these markets, transitional universal service support may be needed to offset lost access charge revenues and to ensure that consumers can continue to receive supported services at reasonable rates. The challenge facing the Commission is to provide support to eligible carriers in markets where access charge reductions otherwise might jeopardize the ability to provide consumers with basic telecommunications services, but not in markets where such support would have the effect of discouraging facilities-based competition. To the extent the Missoula Plan provides all rate-of-return LECs and some price cap LECs with revenue from the Restructure Mechanism, it plainly fails to meet this challenge.

---

<sup>86</sup> See, e.g., *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, R.05-04-005, D.06-08-030 (Cal. PUC Aug. 24, 2006) (granting "broad pricing freedoms concerning almost all telecommunications services"); *Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings*, Case No. 05-C-0616 (N.Y. PSC Apr. 11, 2006) (granting broad pricing flexibility for services other than basic services); *Request of SBC Missouri, for Competitive Classification Pursuant to Section 392.245.6*, Case TO-2006-0093, Report and Order (Mo. PSC Sept. 29, 2005) (granting competitive classification for business and residential services in most exchanges requested by SBC Missouri).

Under no circumstances should the Commission assume that all rural carriers are entitled to dollar-for-dollar replacement of access charge revenues. As LECs provide new services to their end users, such as DSL and video services, a smaller portion of network costs should be recovered through intercarrier compensation and universal service support – companies that choose to compete with rural LECs should not be required to foot the bill for rural LEC broadband investments.

### **CONCLUSION**

For all the reasons explained herein, the Missoula Plan would not achieve the objectives identified by the Commission and should not be adopted. Instead, the Commission should undertake the reforms proposed by NCTA in this pleading, including equalizing termination rates, establishing ground rules for transit arrangements, and adopting other rules consistent with these comments.

Respectfully submitted,

**/s/ Daniel L. Brenner**

Daniel L. Brenner  
Steven F. Morris  
Counsel for the National Cable &  
Telecommunications Association  
25 Massachusetts Avenue, N.W.  
Suite 100  
Washington, D.C. 20001-1431

October 25, 2006