

TABLE OF CONTENTS

I.	THE OPENING COMMENTS CONFIRM THAT ADOPTION OF THE MISSOULA PLAN WOULD NOT SERVE THE PUBLIC INTEREST	1
II.	THE COMMISSION AND THE STATES MUST BEGIN TO MOVE FORWARD WITH PRO-COMPETITIVE INTERCARRIER COMPENSATION REFORMS	4
A.	The Commission Should Clarify Transit Rights And Obligations Under Section 251.	6
B.	The Commission Should Reduce Interstate Access Charges and Encourage State Efforts To Reduce Intrastate Access Charges.	10
C.	Any Access Charge Replacement Mechanism Must Be Reasonably Sized and Competitively Neutral.	11
	CONCLUSION.....	15

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

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

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

The National Cable & Telecommunications Association (“NCTA”) hereby submits its reply comments on the “Missoula Plan” for intercarrier compensation reform. The record confirms that the Missoula Plan does not achieve any of the Commission’s objectives with respect to intercarrier compensation reform. Now that it is clear that there will not be a negotiated industry consensus on intercarrier compensation reform, the Commission must begin to move forward on its own in reforming the current system. In particular, the Commission should clarify transit obligations, reduce interstate access charges, and encourage states to reduce intrastate access charges.

**I. THE OPENING COMMENTS CONFIRM THAT ADOPTION OF THE
MISSOULA PLAN WOULD NOT SERVE THE PUBLIC INTEREST**

It is exceedingly rare for consumer advocates, state regulators, cable operators, wireless carriers, competitive local exchange carriers (“CLECs”), and major incumbent local exchange carriers (“ILECs”) all to agree on any regulatory matter, particularly one that involves complex legal, technical, and financial considerations. Yet all these diverse segments of the telecommunications industry are in agreement that the Commission should not adopt the

Missoula Plan.¹ Indeed, other than the incumbent LEC interests that are parties to the plan, virtually every party to this proceeding believes the plan neither promotes competition nor serves the best interests of consumers.

The Commission should not be misled by the Missoula Plan supporters' attempt to overcome this opposition by claiming that critics of the plan have not offered constructive proposals of their own and are only seeking to "focus on the parochial interests of a particular carrier or class of carriers."² In truth, as the breadth of opposition to the plan makes clear, it is the plan's supporters that are attempting to advance their own parochial interests by making it more difficult and more expensive for competitors to enter the market and provide service. As NCTA explained, the Missoula Plan harms competition in numerous ways, including taking away interconnection rights provided under Section 251(c), eliminating competitively neutral rules regarding CLEC access charges and reciprocal compensation, prematurely deregulating incumbent LEC transit services, and establishing universal service funding mechanisms that blatantly violate Commission policy.

Because the proponents of the plan were more concerned with preserving ILEC revenue streams than promoting competition, virtually every aspect of the plan is tilted in favor of incumbents. Companies that compete with ILECs have identified dozens of provisions within the plan that would favor ILECs over their competitors.³ As many consumer advocates and state

¹ NCTA Comments at 1; NASUCA Comments at 2-6; Texas Public Utility Counsel Comments at 10; CTIA Comments at 7-8; CompTel Comments at 1; Verizon Comments at 5-6; MACRUC Comments at 3-5; Massachusetts DTE Comments at 3; New Jersey BPU Comments at 3.

² Missoula Supporters Comments at 5.

³ NCTA Comments at 6-20; Time Warner Telecom Comments at 8-19; Broadview Comments at 43-65; Cavalier Comments at 10-35; CTIA Comments at 8-26.

commissions recognize, these pro-ILEC provisions in the plan ultimately harm consumers that otherwise would benefit from the development of more robust competition.⁴

The recent changes to the plan that were identified by the Missoula proponents in their comments only serve to confirm the obvious pro-ILEC bias that is guiding this group.⁵ For example, while cable operators and all other competitive providers are treated as Track 1 providers, with all the attendant obligations and restrictions, even when they serve rural areas, changes to the plan would enable an incumbent carrier like Embarq (which serves roughly seven million access lines -- substantially more than any single cable operator) to receive the preferential treatment available to small ILECs under Tracks 2 and 3.⁶

This blatantly discriminatory approach to segmenting carriers is poor public policy. If the Commission concludes that small markets should have different rules, than those rules should apply to all companies serving such markets. If the Commission decides that small companies, rather than small markets, should get preferential treatment, then holding companies with millions of customers should not be eligible. But under no circumstances should the Commission adopt a regime, like the Missoula Plan, in which large ILEC holding companies receive favored treatment over smaller competitors when serving the same geographic area.

⁴ See, e.g., Massachusetts DTE Comments at 14-15; New York PSC Comments at 5; Texas PUC Comments at 4-6.

⁵ Missoula Supporters Comments at Attachment A. In addition, as we explain below, the \$800 million Federal Benchmark Mechanism proposed by the Missoula Plan Supporters on January 30, 2007, renders the plan even more tilted in favor of incumbents, and therefore more objectionable to competitors.

⁶ *Id.*, Attachment A at 2 (changing definition of Track 1 carrier in a study area to exclude any ILEC that serves less 600,000 subscribers in that study area); see also Communications Daily, *Missoula Plan Gains Support from Midsized Companies* (Oct. 26, 2006).

Furthermore, the record demonstrates that the economic benefits claimed by the plan's proponents will not be realized. Along with a group of CLECs, NCTA submitted a report prepared by Economics and Technology, Inc. (ETI) that debunks the AT&T-sponsored economic analysis that was submitted with the Missoula Plan.⁷ The ETI Report makes clear that the Missoula economic analysis rests on patently unrealistic assumptions.⁸ Using more realistic assumptions, the ETI Report demonstrates that adoption of the Missoula Plan would not result in any economic benefits and would harm consumers.⁹

In sum, there is no reason for the Commission to consider adopting the Missoula Plan. The plan would slow the development of facilities-based competition and harm consumers. As we explain in the following section, the Commission should instead begin to resolve the issues identified in the *Intercarrier Compensation FNPRM*.¹⁰

II. THE COMMISSION AND THE STATES MUST BEGIN TO MOVE FORWARD WITH PRO-COMPETITIVE INTERCARRIER COMPENSATION REFORMS

The Missoula Plan is the culmination of a three-year negotiation process among various industry participants to develop a new approach to intercarrier compensation. During this period of time, the Commission generally has steered clear of resolving disputed intercarrier compensation issues so as not to interfere with those negotiations. Although this negotiation process has been helpful in identifying issues and possible solutions, the overwhelming

⁷ See The True Economic Impact of the "Missoula Plan" for Intercarrier Compensation: An Assessment Based on Reality, attached to Ex Parte Letter from Patrick Donovan, Bingham McCutcheon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 8, 2006).

⁸ ETI Report at 12-19.

⁹ ETI Report at 20.

¹⁰ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (*Intercarrier Compensation FNPRM*).

opposition to the Missoula Plan demonstrates that there are certain irreconcilable differences among companies and that a consensus industry solution is not going to emerge.

With the negotiation process having run its course, the Commission must now provide some clarity as to how it intends to move forward with respect to intercarrier compensation reform. As NCTA explained in its initial comments, the Commission must be sure that any reform efforts promote, rather than hinder, the continued development of facilities-based competition.¹¹ Consumers are starting to benefit from competition and the Commission must avoid steps that jeopardize these consumer benefits by eliminating beneficial aspects of the current regime.¹² As NASUCA explains, “customers are much better off under the status quo than they would ever be under the Missoula Plan.”¹³

To ensure that its reform efforts are productive and beneficial, NCTA believes that the Commission should deal with the issues raised in the *Inter-carrier Compensation FNPRM* in groups, on parallel but separate tracks. For example, as we explain below, the set of issues related to transit service (including, but not limited to, phantom traffic) is ripe for Commission resolution, and any further delay in addressing these issues serves only to discourage the expansion of facilities-based competition. These transit issues can and should be addressed independently from other issues in this docket, such as equalizing termination rates, that are more difficult to resolve and may require longer transition periods.

¹¹ NCTA Comments at 6.

¹² For example, numerous companies (both incumbents and competitors) and state commissions expressed concern about the protracted negotiation and arbitration process that likely would result from the new interconnection rules proposed in the Missoula Plan. GCI Comments at 46-47; Verizon Comments at 30-31; Time Warner Telecom Comments at 16-17; New Jersey BPU Comments at 7-8; Florida PSC Comments at 7; Texas PUC Comments at 5; CTIA Comments at 8-10.

¹³ NASUCA Comments at 14.

A. The Commission Should Clarify Transit Rights And Obligations Under Section 251.

The record highlights the critical importance of transit service to competitors. Every type of competitive provider – cable, wireless, CLEC – identified the continued availability of transit service as a vital issue.¹⁴ As NCTA explained in its comments, the combination of Sections 251(c)(2) and 251(b)(5) requires an ILEC to provide interconnection and to deliver traffic to and from entities with which it is interconnected.¹⁵ The Commission should clarify expeditiously that ILECs must provide transit service under the Section 251 framework.¹⁶

Some ILECs oppose any regulation of transit services, arguing that they provide transit service under voluntary arrangements and that this approach has proven successful.¹⁷ This is not a completely accurate characterization of past relationships. In the past, almost all major ILECs routinely provided transit service under their interconnection agreements. These arrangements were “voluntary” in the sense that the ILECs did not generally challenge the inclusion of transit provisions in Section 251 interconnection agreements, but not in the sense that these were commercial agreements negotiated outside the scope of Sections 251 and 252.

¹⁴ NCTA Comments at 10-14; Time Warner Comments at 19-20; CTIA Comments at 14; Cavalier Comments at 14-21.

¹⁵ NCTA Comments at 23-24. Moreover, interconnection is a cornerstone of facilities-based competition for all consumers, including those in rural areas. For this reason, all incumbents, regardless of size, should have a transit obligation.

¹⁶ AT&T’s recent commitment to continue providing transit services under existing arrangements, *see* Letter from Robert W. Quinn, Jr., AT&T, Senior Vice President, Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-74 (Dec. 28, 2006), does not eliminate the need for Commission action. This is an industry-wide problem that requires a comprehensive solution from the Commission.

¹⁷ Qwest Comments at 29-30; Verizon Comments at 34.

The record reveals, however, that some incumbents clearly have changed their strategy and are actively trying to limit the availability of transit service and raise the price at which it is offered. In renegotiating interconnection agreements, they have taken the position that transit is not required to be in the agreement under Section 251, thereby forcing competitors to arbitrate the issue before state commissions pursuant to Section 252.¹⁸ Although twelve states have now ruled in favor of competitors,¹⁹ some ILECs continue to take this untenable negotiating position. In addition, while they advocate a market-driven approach to transit services, many incumbent LECs are actively trying to hamper the development of a competitive transit market. For example, in state arbitrations regarding transit issues, AT&T has taken the position that it need not accept traffic from, or route traffic to, a competitive transit provider selected by a CLEC.²⁰

The ILECs make a number of legal arguments in defense of their position, but none withstand scrutiny. For example, they argue that the interconnection obligation under Section 251(c)(2) applies only to interconnection with the incumbent's network and does not include any obligation to exchange traffic.²¹ Similarly, they argue that the Section 251(b)(5) obligation to enter into reciprocal compensation arrangements only applies to the originating and terminating carriers involved in a call, not to intermediate carriers.²²

¹⁸ NCTA Comments at 11; Cavalier Comments at 63-64.

¹⁹ Cavalier Comments at Attachment 2.

²⁰ State commissions appropriately have rejected these provisions. *See Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas Petition for a Compulsory Arbitration of Unresolved Issues for a Successor Agreement to the Arkansas 271 Agreement*, Docket # 05-081-U, Order No. 6 (Ark. PSC Nov. 14, 2005); *In the Matter of the Petition of the CLEC Coalition for Arbitration against Southwestern Bell Telephone, L.P. d/b/a SBC Kansas under Section 252(b) of the Telecommunications Act of 1996*, Docket No. 05-BTKT-365-ARB, Order No. 16 (Kan. SCC Jul. 18, 2005); *Petition of the CLEC Coalition for Arbitration against Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma under Section 252(b) of the Telecommunications Act of 1996*, Cause No. PUD 200400497, Order No. 522119 (Okl. CC Mar. 24, 2006).

²¹ Qwest 2005 Reply Comments at 37; Verizon 2005 Reply Comments at 10-11.

²² Qwest 2005 Reply Comments at 45; Verizon 2005 Reply Comments at 12-13.

Both arguments take an unduly narrow approach to the statute that is at odds with its language and its intended purpose. Given the goal of fostering facilities-based competition in the local telephone market, there is no reason to think Congress would have left ILECs completely free to withhold transit service or charge any rate they want for the service. Certainly the language of the statute does not support such a narrow interpretation. The obligation in Section 251(b)(5), for example, does not include any qualifications as to the type of traffic that is covered.²³ The language in Section 251(c) is similarly broad.²⁴

In addition to their statutory arguments, a number of ILECs argue that imposing a transit requirement under Section 251 would be inconsistent with prior Commission interpretations of that section of the Act.²⁵ Specifically, they point to statements by the Commission that it “has not had occasion to determine whether incumbent LECs have a duty to provide transit service.”²⁶ The Commission precedent cited by the ILECs is of limited significance here. The Commission did not specifically address transit service in the *Local Competition Order*²⁷ and its subsequent statements were made in the context of adjudicatory proceedings applying the rules it adopted in

²³ Although the Commission has in the past tried to read qualifications into Section 251(b)(5), those efforts have not passed judicial muster. See *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

²⁴ See NCTA Comments at 23-24; Cavalier Comments at 62, citing *Michigan Bell Tel. Co. v. Chapelle*, 222 F. Supp. 2d 905, 917 (D. Mich. 2002), aff’d 93 Fed. Appx. 799 (6th Cir. 2004).

²⁵ Verizon Comments at 34; Verizon 2005 Reply Comments at 6-7.

²⁶ *Application by BellSouth Corporation, et al, to Provide In-Region InterLATA Services in Florida and Tennessee*, WC Docket No. 02-307, Memorandum Opinion and Order, 17 FCC Rcd 25828, 25911, ¶ 155 (2002); see also *Application by Verizon Maryland, Inc., et al., to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, WC Docket No. 02-384, Memorandum Opinion and Order, 18 FCC Rcd 5212, 5271, ¶ 101 (2003) (“There is nothing in our rules implementing Section 251(b)(3), however, that requires a LEC to provide transiting.”); *Petition of WorldCom, Inc., Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 17 FCC Rcd 27039, 27101, ¶ 117 (WCB 2003).

²⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) (*Local Competition Order*).

that order. This proceeding marks the first time the Commission is addressing transit issues in the context of a rulemaking and the first time it has a fully developed record upon which to act. The fact that Commission did not even mention the orders cited by the ILECs in the *Intercarrier Compensation FNPRM* strongly suggests that the Commission did not think these decisions were even relevant, let alone binding.

Not only is the ILECs' reading of Commission precedent inaccurate, it ignores the fact that the Commission is free to adopt a new interpretation of the statute. It is well established that the Commission may reinterpret statutory provisions in response to changed circumstances.²⁸ The Commission's interpretation of a different provision in Section 251 – Section 251(i) – is instructive. The Commission initially interpreted Section 251(i) to permit CLECS to “pick and choose” among different provisions when opting in to interconnection agreements.²⁹ Although that decision was upheld by the Supreme Court,³⁰ the Commission subsequently adopted a new rule, the “all or nothing rule,” based on an entirely different interpretation of Section 251(i).³¹ In contrast to the initial rule, which was based on a “forecast [of] how a new statutory framework would play out,” the new rule was “informed by the competitive experiences compiled in the record.”³² The Commission's decision to reverse course was upheld by the D.C. Circuit.³³

²⁸ See, e.g., *Southern Company Services v. FCC*, 313 F.3d 574, 581 (D.C. Cir. 2002); *Greater Boston Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970).

²⁹ *Local Competition Order*, 11 FCC Rcd at 16139, ¶ 1314.

³⁰ *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 396 (1999).

³¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd 13494 (2004).

³² *Id.* at 13500, ¶ 9.

³³ See *New Edge Network, Inc. v. FCC*, 461 F.3d 1105, 1113 (9th Cir. 2006) (record evidence supported new interpretation of Section 251(i)). Incumbent LECs were fully supportive of the Commission's decision to adopt this new interpretation of Section 251. *Id.* at 1109, 1113.

As was the case with respect to Section 251(i), it is time for the Commission clarify its rules in response to “the competitive experiences compiled in the record.” That record is more than sufficient to demonstrate that a clear Commission rule requiring incumbent LECs to continue providing transit service under Section 251 is needed. In particular, the record reveals that circumstances have changed since the *Local Competition Order* was adopted in 1996 and that incumbent LECs have started to unreasonably limit the availability of transit service to the detriment of facilities-based competitors. Given the history and recent developments, there is nothing that prevents the Commission from imposing a transit requirement under Sections 251(c)(2) and 251(b)(5).

B. The Commission Should Reduce Interstate Access Charges and Encourage State Efforts To Reduce Intrastate Access Charges.

The record confirms that equalizing termination rates is a critical step in intercarrier compensation reform.³⁴ Equalizing termination rates would achieve one of the Commission’s goals for this proceeding by simplifying the current patchwork of intercarrier compensation regimes.³⁵ In addition, as NCTA has explained, equalizing terminating rates is a far better way to address issues with phantom traffic than the complicated, burdensome set of rules that have been proposed by the proponents of the Missoula Plan.³⁶

Although there is widespread agreement that this is the correct policy goal, there are differences of opinion as to how this goal should be achieved. State commissions, in particular,

³⁴ NCTA Comments at 28-31; CTIA Comments at 16-17; *see also* NASUCA Comments at 76-78 (describing plan to minimize, but not eliminate, rate disparities over a five year period).

³⁵ *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4702, ¶ 33.

³⁶ NCTA Phantom Traffic Comments at 7.

are reluctant to endorse an approach in which the FCC mandates particular rates for jurisdictionally intrastate services.³⁷

The Commission can take the initial step toward equalized termination rates by bringing interstate access rates in line with cost-based reciprocal compensation rates that have been established under Section 251(b)(5). This approach clearly falls within the Commission's legal authority under Section 201. Although this is not a complete solution, requiring companies to charge the same rate for terminating local and interstate toll calls should facilitate resolution of phantom traffic disputes, particularly in states that require intrastate access rates to mirror interstate rates.

After equalizing termination rates for types of traffic directly within its jurisdiction, the Commission should move on to addressing ways to achieve uniformity across jurisdictions. NCTA believes that reducing intrastate rates to interstate levels will lead to fewer disputes between carriers, particularly with respect to VoIP traffic, which in turn should promote competitive entry.³⁸

C. Any Access Charge Replacement Mechanism Must Be Reasonably Sized and Competitively Neutral.

The Missoula Plan proposes to offset access charge reductions with a \$1.5 billion Restructure Mechanism, an \$800 million Early Adopter Fund for states that previously reduced intrastate access charges,³⁹ and over \$500 million in additional high-cost assistance and long-

³⁷ Florida PSC Comments at 3-4; New York PSC Comments at 6-10; Texas PUC Comments at 7-8.

³⁸ The fact that the two biggest ILECs in the country – AT&T and Verizon – have agreed to exchange VoIP traffic with each other at a unified rate of \$.0004, the same rate they use for local and ISP-bound traffic, is evidence that such an approach offers tremendous benefits. *See Interconnection Agreement Between Verizon New York, Inc. and AT&T Communications of New York, Inc.*, Docket No. 06-C-0849 (N.Y. PSC Oct. 16, 2006)

³⁹ *See* Letter from Joseph Sutherland, Executive Director, Indiana Utility Regulatory Commission, *et al.*, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attachment at 7 (Jan. 30, 2007) (Early Adopters Letter).

term support to rural ILECs.⁴⁰ In total, the plan would add close to \$3 billion to the existing federal universal service support mechanisms.

The funding mechanisms proposed in the Missoula Plan suffer from serious flaws. First, the proposed mechanisms will impose significant and unnecessary burdens on consumers. The Restructure Mechanism is simply too large because it erroneously provides all ILECs with dollar-for-dollar replacement of access charge revenues.⁴¹ In most cases the substantial deregulation of retail rates for intrastate and interstate services provided by LECs means that these carriers should be able to recover costs from their end users without needing any type of access charge replacement mechanism.⁴²

Moreover, as suspected, the original Missoula Plan proposal drastically understated the amount of additional funding that will be required because the estimated size of the Early Adopters Fund was unrealistically small.⁴³ That fund originally was projected to be \$200 million, but is now proposed to exceed \$800 million.⁴⁴ This additional funding, like the rest of the proposed universal service support, is just one more way that the plan would preserve ILEC revenues at the expense of their competitors.

⁴⁰ Missoula Plan, Executive Summary at 12.

⁴¹ NCTA Comments at 33; NASUCA Comments at 20-22; CTIA Comments at 26-27.

⁴² NCTA Comments at 31-32. For a limited set of geographic areas, equalization of termination rates at levels significantly lower than current rates may be unduly burdensome to consumers unless additional funding is made available to offset revenue reductions. NCTA does not oppose providing some transitional support to companies serving these areas, as long as such support does not have the effect of discouraging facilities-based competition by requiring competitors to subsidize rural ILEC broadband and video investments. *Id.* at 32-33.

⁴³ NASUCA Comments at 74.

⁴⁴ Early Adopters Letter, Attachment at 7.

Second, the proposal to exclude competitive providers from access to the Restructure Mechanism violates the Commission's requirements. The Restructure Mechanism is a universal service funding mechanism, and the Commission has made clear that such funding must be made available on a competitively neutral basis.⁴⁵ The effect of the Restructure Mechanism is to shield incumbent LECs from the effects of competition by locking in existing revenue streams that otherwise would be declining. As noted by numerous parties, this would be bad public policy that is harmful to consumers.⁴⁶

In their comments, some of the Missoula Supporters argue that the Commission can adopt the Restructure Mechanism as an element of the interstate access charge regime, thereby avoiding the portability requirement that applies to universal service support mechanisms.⁴⁷ According to this theory, the Commission has authority under Sections 201 and 205 to establish interconnection charges. These carriers assert that the Restructure Mechanism is similar to existing pooling procedures used by NECA, in that carriers would pay into a fund that is then distributed to LECs. The difference, however, is that while CLECs do not participate in the NECA pools, they do get to impose the same type of charges. The charges covered by the Restructure Mechanism, on the other hand, would be imposed only by incumbent LECs.

The analogy to the NECA collection regime also ignores the fact that contributions to the Restructure Mechanism are intended to be collected from end users, with the paying provider merely a conduit for those payments.⁴⁸ If collection from end users was not a part of the plan,

⁴⁵ NCTA Comments at 18.

⁴⁶ NASUCA Comments at 20-24.

⁴⁷ Missoula Supporters Comments at Attachment B.

⁴⁸ As noted by many parties, the Missoula Plan assumes that these contributions will be collected from end users, but it contains no proposal for how this would work. *See, e.g.*, Verizon Comments at 28.

the Restructure Mechanism would consist of nothing more than replacing one set of intercarrier payments that is tied to actual use of the network (i.e., terminating minutes of use) with a new, more complicated set of intercarrier payments tied to some other factor (i.e., a provider's revenue or the number of customers it serves). There is no purpose that would be served by "reform" of this nature.

As an alternative to this flawed legal theory, other supporters of the Missoula Plan argue that the Commission has authority under Section 254 to adopt the Restructure Mechanism.⁴⁹ According to this theory, the Commission's authority under Section 254 includes the ability to establish disbursement rules that distinguish between different types of providers. This argument ignores completely the Commission's decision to make competitive neutrality a fundamental principle of the universal service program. The proponents of the Missoula Plan offer no sound basis for departing from the principle of competitive neutrality. If the Commission decides to make additional funding available to offset access charge reductions, that funding must be available to all providers, not just incumbents.

⁴⁹ Missoula Supporters Comments at Attachment C.

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

February 1, 2007