

Federal Communications Commission
Washington, D.C. 20554

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

**REPLY COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

BACKGROUND AND INTRODUCTION

The National Association of Regulatory Utility Commissioners' ("NARUC") Task Force on Intercarrier Compensation filed an intercarrier compensation reform plan ("Missoula Plan" or "Plan") with the Federal Communications Commission ("FCC") on July 24, 2006. Subsequently, Missoula Plan Supporters and several State commissions filed a modification to the Plan, referred to as the Federal Benchmark Mechanism ("FBM"). *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, The Missoula Plan Amendment to Incorporate a Federal Benchmark Mechanism, (filed January 30, 2007) ("FBM Proposal"). The FCC established a comment cycle on this revision with initial comments due March 28, 2007 and reply comments are due April 12, 2007. The Public Utilities Commission of Ohio ("Ohio Commission") hereby submits its reply comments concerning the Plan modifications filed January 30, 2007.

As we noted in our original comments on the FBM, the docket in this case is voluminous, and grows with every iteration of modification, comment, and reply. The FBM represents one such iteration, and quite possibly, not the last. A great deal of time has been expended in good faith efforts to develop a Plan that will work, and will

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satisfy a broad enough spectrum of the industry to be called a consensus. As we will note in this Reply, these efforts are not working. Ohio's position on the Plan is at this point well known. Rather than significantly expanding this docket merely to repeat what has already been said, Ohio will, in this Reply, make some observations regarding the initial FBM comments and suggest an appropriate course of action from this point.

DISCUSSION

A. The FBM has not added to the "consensus" aspect of the Plan.

As is noted by the Pennsylvania PUC, the FBM appears to be the result of the efforts of a subset of the Missoula Plan Supporters. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comment of the Pennsylvania Public Utilities Commission (filed March 28, 2007) at 2 ("*Pennsylvania Comments*"). Indeed those who had issues with the Plan, who presumably were the "target market" for any modifications to increase the consensus, were not involved. "Those states with significant concerns with the Missoula Plan and the Amended Missoula Plan did not participate...." *Pennsylvania Comments* at 2. This has been a trend in the development of the Plan. What started out as a valiant effort sponsored by NARUC to involve the entire gamut of interested parties in resolving the issues surrounding intercarrier compensation evolved into a narrow effort led by far smaller group. Each step of the way in the development of the plan, the "consensus" involved in the development of the next step has lessened, not increased. As the details are worked out by smaller and smaller groups, the level of consensus involvement will invariably decline.

B. The FBM has not added significant support for the Plan.

With the exception of the few states who came forward as signers of the FBM

proposal (none of whom had filed comments on the Plan previously), the FBM has not garnered additional support for the Plan. The comments of the various parties who did comment were, in general, indicative of their earlier positions on the Plan. In fact, it is the exceptions to this generality that are noteworthy.

Some commenters on the FBM, who were staunch supporters of the Plan, expressed opinions ranging from a valid concern regarding how the FBM would look once the details were worked out, to outright alarm at the proposal. Some examples are as follows:

- “The MIC generally supports the development (of) benchmarks, such as the Federal Benchmark Mechanism (“FBM”) discussed in the January 30, 2007 ex parte letter. However, the MIC does not have sufficient information to comment on whether the specific levels of the FBM are appropriate. Evaluation of the specific levels can occur as a later part of this process.” *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Reply Comments of the Minnesota Independent Coalition (Filed March 28, 2007) at 1 (“*Minnesota Comments*”).
- “TSTCI strongly supports the Missoula Plan.... However, TSTCI is concerned about the impact of the proposed FBM on ratepayers and small, rural companies in Texas. TSTCI also has concerns regarding the specifics of implementing the FBM and believes a more in depth examination of the FBM plan is needed before TSTCI can fully lend its support to the FBM proposal.” *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comment of Texas Statewide Telephone Cooperative (Filed March 28, 2007) at 1 (“*TSTCI Comments*”).
- “Throughout its prior Comments in this Docket Alexicon has generally supported the concepts contained in the initial July 24, 2006 proposal,....” *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Reply Comments of Alexicon Telecommunications Consulting (Filed March 28, 2007) at 1 (“*Alexicon Comments*”).

Alexicon believes that the fundamental concepts of the initial intercarrier compensation reform have nothing to do with affecting end user-rates and neither contained local rate modifications nor comparison of state-to-state end user rates. We initially supported the “early adopter” state incentives but do not support the use of end user local exchange service rate inclusion in the calculation(s). *Id* at 4.

It appears that the FBM, while it may have solidified the support of some parties, has had the opposite effect among others.

One final comment regarding the comments of the FBM supporters; a number of them base their support (for the Plan in general and / or specifically the FBM) clearly on how well it worked for them. Certainly, these commenters have a legitimate need, right, and responsibility to seek out as advantageous as a result for their interests as can be achieved. However, how well a proposal works for some parties (when those who do not see a benefit to the proposal are no longer part of the discussion behind the proposal) should not be the basis for either declaring a consensus, or establishing a national policy.

C. The Plan as modified by the FBM, overreaches, and as a result, fails.

As noted earlier, a great deal of good-faith effort by many parties has gone into the development of the Missoula Plan. It is, as the Plan Supporters state, an attempt to resolve the myriad issues of intercarrier compensation, universal service, phantom traffic, and a host of other items, in a single bundle supported by a large number of parties. It is an attempt to do everything for everyone, and because it tries to do so much, for so many, it fails.

It fails because, rather than dealing with root causes, it attempts to cushion the effects. It fails because the diverse problems it seeks to resolve were not created by a single action or event and as a result have diverse causes which should be individually rectified. It fails because, in order to gain consensus, the focus has moved from dealing with costs (in both universal service and access charges) to maintaining revenues. It fails because its mechanisms for creating support depend on funding by end-users. It fails because, in order to do so many things, the Plan has lost sight of the initial goals of

simplicity and transparency, efficient competition, ability to accommodate change, regulatory certainty, and minimal impact on end user charges and USF costs, as laid out in the FCC's NPRM and FNPRM in this Docket and elsewhere.¹

The supporters of the Missoula Plan have really tried, however, they have come up against the stark reality noted by the Internet Engineering Task Force Network Working Group in their Request For Comments No. 1925 in item 2(5).² As is noted by the Virginia Corporation Commission Staff in their Comments "[t]he FCC, industry, and state commissions should focus efforts on more manageable and reasonable methods to address intercarrier compensation as well as universal service reform." *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Virginia State Corporation Commission Staff (filed March 19, 2007) at 13.

¹ For a concise summary of the FCC's goals and references, see *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Reply Comments of the Public Utilities Commission of Ohio (filed February 1, 2007) at E.

² "It is always possible to agglutinate multiple separate problems into a single complex interdependent solution. In most cases this is a bad idea." Available at: <http://www.ietf.org/rfc/rfc1925.txt>

CONCLUSION

The NARUC is to be commended for a single-minded effort to create a solution for the intercarrier compensation problem. We are grateful for the educational benefits of the process it initiated, and the visibility that the Missoula process has shed on a number of difficult national policy issues.

As the Plan developed, however, the design process drifted away from a strategy of building true industry-wide consensus, around a few key principles to resolve a single important issue, to a strategy of gaining support for a broad-spectrum plan from a narrower, but influential, group. The FBM is another example of that latter strategy.

It is now time to stop “adjusting” the Missoula Plan, and evaluate the highly valuable lessons learned. It is time to develop an intercarrier compensation solution consistent both with the goals and principles outlined by the FCC, as many commenters have urged, as well as the complimentary federal and state roles outlined in the July, 2005 NARUC Legislative Task Force Report on Federalism and Telecom.

The Ohio Commission believes that it is with good reason that the FCC has established separate dockets for intercarrier compensation, universal service and other issues. While each issue must be resolved in the context of the solutions to other issues, attempts to resolve them all in a single “master plan” have yet to meet the important national policy goals identified within those individual dockets.

The FCC has within this docket an array of different proposals and concepts for reforming intercarrier compensation. The Ohio Commission believes that the proposals put forward by various stakeholders in this docket, including the Plan, each contain discrete elements that could be used to develop a workable and equitable solution to

intercarrier compensation in line with the goals of equity, ease of administration, and furthering the development of the industry and new technologies. It is time to restore a focus on appropriate goals and criteria for intercarrier compensation reform, identify the concepts most consistent with those goals, and assemble those pieces into a focused, consistent and working whole.

It is a challenging task, to be sure, but not the first one the FCC and the States have dealt with together, and most probably not the last.

Respectfully submitted,

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