

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF THE NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE**

On February 16, 2007, the Commission issued a Public Notice in the above-entitled proceeding inviting comments on amendments to the Missoula Plan for Intercarrier Compensation Reform (Plan) to incorporate a proposal addressing issues faced by “early adopter” states. The New York State Department of Public Service (NYDPS) submits these comments in response to the Public Notice.

**INTRODUCTION**

The proposed Plan amendments, set forth in a January 30, 2007 *ex parte* submission by the Plan’s proponents,<sup>1</sup> and corrected by another filing on February 5, 2007,<sup>2</sup> create a “Federal Benchmark Mechanism” (Mechanism) to implement the Fund.<sup>3</sup> The Mechanism consists of four categories. Category A creates a “high benchmark” of

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<sup>1</sup> Letter from Missoula Plan Supporters, *et al.*, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Jan. 30, 2007).

<sup>2</sup> Letter from Missoula Plan Supporters, *et al.*, as corrected, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Feb. 5, 2007) (“Amendments”).

<sup>3</sup> *Id.* at 1.

\$25 for retail rates. Where “residential revenues per line”<sup>4</sup> (RRL) with respect to a given carrier exceed the high benchmark, the Plan’s proposed increase in the subscriber line charge (SLC)<sup>5</sup> to that carrier’s subscribers is reduced or eliminated, so as to effectively cap the RRL at the high benchmark. Mechanism support then replaces the SLC revenue foregone by that carrier.<sup>6</sup> Category B is intended to reduce existing consumer contributions to any existing intrastate universal service fund (USF) and/or the SLC where a carrier’s RRL already exceeds \$25 prior to the addition of the Plan’s permitted SLC increase. Category B funding provides 75% of the amount by which the pre-Plan RRL exceeds \$25.<sup>7</sup> Category C reduces consumers’ intrastate USF contributions without regard to the RRL. It is designed to target Mechanism support solely toward early adopter states that have utilized an intrastate USF to reduce intrastate access charges.<sup>8</sup> The fourth category is a “low rate adjustment,” which further increases the Plan’s allowable SLC increase by an additional \$2 when the RRL plus the Plan’s SLC increase results in an end user rate of less than \$20. Thus, for carriers with low rates, the carrier’s support from the Plan’s Restructure Mechanism would be reduced, and that support would be replaced by allowing the carrier an additional SLC increase. The low rate

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<sup>4</sup> “Residential revenues per line” equals the total of: the residential flat rate + existing interstate and intrastate subscriber line charges (SLCs) + existing intrastate universal service fund (USF) contributions + extended area service (EAS) and/or other surcharges.

<sup>5</sup> The Plan proposes to allow carriers to increase their SLCs by an amount of \$2.25 to \$3.50, depending on the carrier’s size. This increase would be phased in gradually, in four steps, through the duration of the Plan.

<sup>6</sup> Amendments, attachment, “Supporting Comparability Through a Federal Benchmark Mechanism” at 1.

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> *Id.* at 2.

adjustment is intended to apply to states that have not reduced intrastate access charges,<sup>9</sup> apparently on the theory that carriers in those states have low end user rates because they have not reduced their access charges.

## DISCUSSION

The proposal appears to be an attempt to implement, with some modifications, the Plan's Early Adopter fund (the Fund). The original intent of the Fund was to reimburse "explicit state funds" that some states have utilized to reduce intrastate access rates. As the NYDPS pointed out in its Comments on the Plan, the Fund concept failed to provide any relief to states that are rebalancing rates without the use of an explicit state fund.<sup>10</sup> We also explained that no attempt had been made to quantify such states' prior rebalancing efforts, and that indeed it would be very difficult to do so.<sup>11</sup> Most importantly, we pointed out that the Fund would improperly attempt to federalize previous reductions of intrastate access charges.<sup>12</sup>

The Amendments respond to a weakness in the Plan, which is the requirement that States maintain an intrastate universal service fund as a condition of receiving Fund support. However, the fundamental problem with the Plan and the Amendments remains – the Commission lacks legal authority to determine intrastate access charges.

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<sup>9</sup> *Id.*

<sup>10</sup> Comments of the NYDPS, CC Docket No. 01-92, at 8 (filed Oct. 25, 2006).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 6-7.

Furthermore, the Amendments, as drafted, do not provide sufficient information to allow interested parties to discern the financial consequences of the Amendments upon subscribers and carriers in their respective States. There is no breakdown by State or by carrier as to the projected amount of access charge reduction under the Plan. Likewise, the Amendments do not reveal which carriers would receive Mechanism support, and in what amounts. Also, the Amendments do not reveal how the numbers in the Amendments' attached tables were calculated. In the absence of information concerning the methodologies and underlying data utilized, it is impossible to verify the accuracy of those numbers.

Moreover, as the NYDPS understands the Amendments, this proposal raises various policy concerns. First, the Mechanism's reliance on federal residential rate benchmarks as a surrogate for quantification of states' prior rate rebalancing efforts may be inappropriate. As noted above, the premise underlying the Mechanism's benchmark approach appears to be that states which have low end user rates must not have reduced intrastate access rates. This premise ignores the real possibility that a state's rate levels might be outside the Mechanism's benchmark range due to reasons other than prior rate rebalancing.

Second, the rate benchmark levels set by the Mechanism do not reflect current Commission policy. In 2003, the Commission set a rate benchmark of \$32.28 when it last modified its non-rural high cost funding mechanism.<sup>13</sup> The Commission should

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<sup>13</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22562 ¶ 4 (rel. Oct. 27, 2003).

require further justification before considering the Mechanism's proposed rate benchmarks.

### CONCLUSION

Neither the Plan, the Fund, nor the proposed Amendments recognize the Communications Act's preservation of state sovereignty with respect to intrastate ratemaking. In the event that the Commission does go forward, it must first require that the Plan's proponents provide and justify the impacts of the Amendments upon States, companies and consumers. For all of the foregoing reasons, the Commission should not adopt the proposed Amendments to the Missoula Plan for intercarrier compensation reform.

Respectfully submitted,



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