

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

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

**COMMENTS OF THE
OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION,
IN RESPONSE TO THE MISSOULA INTERCARRIER COMPENSATION PLAN**

The Office of Advocacy of the U. S. Small Business Administration (“Advocacy”) submits these Comments to the Federal Communications Commission (“FCC” or “Commission”) in response to an intercarrier compensation reform plan (the “Missoula Plan”) filed July 24, 2006, by the National Association of Regulatory Utility Commissioners’ Task Force on Intercarrier Compensation.¹ The FCC is seeking comment on the plan that, according to its supporters, “unifies intercarrier charges for the majority of lines, and moves all intercarrier rates charged for all traffic closer together.”²

Advocacy believes that the Missoula Plan will have a significant economic impact on small telecommunications carriers. The FCC should give careful consideration to the impact information and alternatives presented by small entities. Advocacy’s earlier comment in response to the FCC’s proposed rule on intercarrier compensation identifies regulatory impacts and provides alternatives that the Commission should consider when it does its regulatory flexibility analysis.

¹ 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 Dkt. No. 01-92 (filed July 24, 2006).

² *Id.*, Attach. (Executive Summary) at 1.

1. Advocacy Background.

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (“SBA”), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act (“RFA”) requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act.³

On August 13, 2002, President George W. Bush signed Executive Order 13272 requiring federal agencies to implement policies protecting small entities when writing new rules and regulations.⁴ In accordance with Executive Order 13272, Advocacy may provide comment on draft rules to the agency that has proposed a rule, as well as to the Office of Information and Regulatory Affairs (“OIRA”) of the Office of Management and Budget.⁵ Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule’s publication in the *Federal Register*, the agency’s response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁶

2. Consideration of Small Business Impacts and Alternatives When Evaluating the Missoula Plan.

In response to the FCC’s Further Notice of Proposed Rulemaking (“FNPRM”),⁷ Advocacy filed comments that summarized the impact of intercarrier compensation on small

³ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified at 5 U.S.C. § 612(a)).

⁴ Exec. Order. No. 13272 at § 1, 67 Fed. Reg. 53,461 (2002).

⁵ E.O. 13272, at § 2(c).

⁶ *Id.* at § 3(c).

⁷ See *Further Notice of Proposed Rulemaking*, CC Dkt. No. 01-92, FCC 05-33 (rel. March 3, 2005).

business and outlined several alternatives for the Commission to consider.⁸ Advocacy continues to believe that a uniform intercarrier compensation regime is in the interest of small businesses. During its consideration of the Missoula Plan, the Commission should analyze the impact of the plan upon small businesses and consider alternatives contained within the Missoula Plan and suggested by small businesses in response to the plan to minimize any regulatory impact on small businesses. The Missoula Plan addresses several of the principles outlined by Advocacy in its earlier comment as discussed below.

a. Unified Intercarrier Compensation Rates.

The current jumble of intercarrier compensation regulations are burdensome on small business, create economic inefficiencies, and act as a barrier to entry. It is more difficult for smaller carriers to comply such a confusing array of regulations with than larger carriers as it requires sophisticated technology and significant technical expertise. Any plan the Commission adopts should simplify the current system and move toward a unified system.

The Missoula Plan takes steps to address this issue, unifying the compensation rates for a vast majority of carriers, and reducing all intercarrier compensation rates to three tracks.⁹ Advocacy supports the plan's goal of unifying compensation rates while preserving flexibility for small carriers. However, Advocacy believes that similarly situated carriers should be treated alike under the regulations. If small wireless and small competitive carriers are serving the same customers and area as Track 2 or Track 3 carriers, these carriers should have the option to use those compensations rules.

Advocacy stated in its earlier letter that the best entities to define their relationship are the carriers themselves and recommended that the Commission permit carriers to enter into

⁸ Letter from Thomas M. Sullivan, Chief Counsel, to the *Further Notice of Proposed Rulemaking* CC Dkt. No. 01-92, FCC 05-33 (May 23, 2005).

⁹ Missoula Plan, Attach. (Executive Summary) at 4-6.

intercarrier compensation arrangements. The Missoula Plan rules would allow for negotiated arrangements, as they are designed to be default rules, allowing carriers the flexibility to agree to alternative arrangements.¹⁰

b. Interconnection.

To compete effectively in the telecommunications marketplace, a small carrier must interconnect with other larger carriers. Since interconnection is a necessity, smaller carriers ordinarily will be at a disadvantage when negotiating terms with a larger carrier. In our previous letter, Advocacy recommended that the Commission allow carriers to negotiate the terms of interconnection, but a minimum level of interconnection should continue to be required.

The Missoula Plan requires carriers to allow other carriers to interconnect at the edge of the network but still allows carriers flexibility to enter into public or private peering arrangements for Internet Protocol traffic.¹¹ The plan does not cover interconnection for special access services which are commonly used by competitive carriers. Advocacy believes that the Commission should address special access interconnection in its revised intercarrier compensation regime.

c. Universal Service.

Any reform of intercarrier compensation will have a significant impact upon carriers reliant upon universal service. Treating different classes of technology differently under universal service could have an impact on developing technologies and act as a barrier to entry for new entrants into the rural marketplace.

The Missoula Plan makes changes to a number of universal service mechanisms and

¹⁰ Missoula Plan, Attach. (Executive Summary) at 2.

¹¹ Missoula Plan, Attach. (Executive Summary) at 11.

creates a “Restructure Mechanism” during the transition period.¹² The restructure mechanism makes up for any shortfall in revenues recovered. As stated in our previous letter, any revision of the universal service system done in conjunction with intercarrier compensation reform must make universal service portable and equitable. Universal service should be technologically neutral and available to all classes of carriers.

6. Conclusion.

Advocacy urges the FCC to consider the comments from small entities, analyze the impact on small businesses, and explore alternatives before proceeding to a final rule. The Office of Advocacy is available to assist the Commission in its outreach to small business or in its consideration of the impact upon them. For additional information or assistance, please contact me or Eric Menge of my staff at (202) 205-6533 or eric.menge@sba.gov.

Respectfully submitted,

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¹² Missoula Plan, Attach. (Executive Summary) at 12-13.

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Commissioner Deborah Taylor Tate

Commissioner Robert M. McDowell

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Certificate of Service

I, Eric E. Menge, an attorney with the Office of Advocacy, U.S. Small Business Administration, certify that I have, on this October 25, 2006, caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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