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**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
) CC Docket No. 01-92
Intercarrier Compensation)

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON THE MISSOULA PLAN**

I. INTRODUCTION AND SUMMARY

Just prior to the February 1, 2007 date set for the filing of reply comments on the so-called Missoula Plan,¹ the Missoula Plan Supporters and several state utility commissions (“MPSSSUCs”) filed an ex parte communication that contained amendments to the Missoula Plan, adding a “Federal Benchmark Mechanism” (“FBM”) to the Plan.² In a Public Notice released on February 16, 2007, the Federal Communications Commission (“FCC” or “Commission”) requested comment on the amendments.³

¹ See ex parte communication (July 24, 2006) from the NARUC Task Force on Intercarrier Compensation (“NARUC Task Force”), with “Missoula Plan” attached.

² See ex parte communication (January 30, 2007) from the Missoula Plan Supporters and the Indiana Utility Regulatory Commission, Maine Public Utilities Commission, Nebraska Public Service Commission, Vermont Department of Public Service, Vermont Public Service Board and Wyoming Public Service Commission (“January 30 ex parte”). (Henceforth, unless specifically noted, references to the January 30 ex parte are to the portion of the document following the cover letter that is labeled “Supporting Comparability Through a Federal Benchmark Mechanism.”) In a February 5, 2007 filing, two errors in the attachment to the January 30 filing were corrected.

³ DA 07-738.

The National Association of State Utility Consumer Advocates (“NASUCA”⁴) presents these initial comments on the FBM. The FBM would be worth more consideration if it were presented independently in the Commission’s universal service dockets. Unfortunately, the FBM is **not** presented independently: It is inextricably entwined with the fundamentally misguided and flawed Missoula Plan, and therefore should not be adopted, for the many reasons set forth in the initial and reply comments filed by NASUCA⁵ and by many other commenters. As NASUCA stated, “NASUCA believes all such attempts to rescue the Missoula Plan are a forlorn hope. No amount of make-over can disguise the plan’s rotten foundations.”⁶

It is notable that the FBM is proposed as a means to correct one of the glaring inequities of the Missoula Plan, that being “the effects of the Plan on ‘early adopter’ states, i.e., those states that have already taken action to substantially reduce intrastate access charges.”⁷ The Missoula Plan as originally presented “solved” the problem of intercarrier compensation by substantially reducing intercarrier payments, but replaced every dollar in lost revenue **and more** with payments from the subscriber line charge

⁴ NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

⁵ See NASUCA Initial Comments, filed October 25, 2006; NASUCA Reply Comments, filed February 1, 2007.

⁶ NASUCA Reply Comments at 2, n.3.

⁷ January 30 *ex parte* at 1.

(“SLC”) and from the federal universal service fund (“USF”).⁸ The FBM “solves” **this** problem by adding an additional \$800 million to the federal USF!⁹ This eases some of the burden on “early adopter” states, but does so by increasing the burden on everyone else. The cost to consumers of reducing intercarrier rates by \$6 billion rises to over \$7 billion under the FBM.

And the FBM continues the fundamental fatal flaw of the Missoula Plan, that being its assumption that dollar-for-dollar replacement of lost intercarrier compensation revenues is lawful, necessary and reasonable. The Missoula Plan plus the FBM represents even more of a lock-in of local telephone companies’ revenues than did the Missoula Plan standing alone. Such guarantees are neither a necessary nor a reasonable means for dealing with the problems with the current intercarrier compensation system.¹⁰ Taken all together, the FBM can perhaps be described as both “too little” (it does not solve the Missoula Plan’s problems) and “too much” (it costs even more than the original Missoula Plan).

It should be clear that NASUCA agrees with the FBM’s identification of one of the central problems with the Missoula Plan:

These early adopter states have suggested that the RM could impose a disproportionate burden on their customers ... because the early adopter states have either eliminated or sharply reduced intrastate access charges, their carriers may be entitled to fewer or even no RM dollars. Furthermore, customers in early adopter states already bear the burden of funding an explicit state universal

⁸ As discussed in NASUCA’s comments, the ILECs will collect \$6.9 billion to replace \$6.0 billion in lost intercarrier compensation. NASUCA Comments at 36-37.

⁹ January 30 ex parte at 7.

¹⁰ NASUCA’s proposals were fundamentally superior to the Missoula Plan. See NASUCA Comments at 76-92. NASUCA’s proposals are also superior to the Missoula Plan as amended by the FBM.

service fund or higher local rates caused by their state's reduction of access charges. At the same time, customers in these states will be required to help pay for the recovery of intrastate access revenue reductions in states that were not early adopters.¹¹

But the solution to this problem is not to increase the burden on other customers -- to the tune of \$800 million dollars. The solution is to adopt a plan -- like NASUCA's -- that does not guarantee the carriers recovery of all of their lost dollars... and more!

II. DESCRIPTION OF THE FBM

The FBM adopts four separate but interrelated mechanisms that adjust the federal funding to states, acting as a supplement to the Restructure Mechanism ("RM") included in the original Missoula Plan. The FBM adds a projected total of \$806 million annually to the \$1.25 billion "universal service" funding contained in the original Missoula Plan.¹²

Key to the FBM is the adoption of a "high benchmark target" ("HBT") of \$25.00 and a "low benchmark target" ("LBT") of \$20.00.¹³ The targets are compared to "residential revenues per line" ("RRPL"), consisting of "the sum of the basic residential local rate (1FR or equivalent) plus current interstate SLC plus current intrastate SLC and SLC-like surcharges ... plus State USF per Line for a given study area."¹⁴

¹¹ January 30 ex parte at 2.

¹² January 30 ex parte, "Effects of Missoula Plan Restructure Mechanism and Federal Benchmark Mechanism" ("RM and FBM"), page 2. As discussed later, this figure is decidedly low.

¹³ January 30 ex parte at 1. There is no explanation of how these targets were derived.

¹⁴ Id.

So-called “Category A” funding will replace the Missoula Plan’s SLC increases, where the current RRPL is greater than the HBT.¹⁵ The telephone company is guaranteed the same level of revenues; the source of those revenues has simply changed. Similarly, where the current RRPL plus the Missoula Plan’s SLC increases would be greater than the HBT, Category A funding will replace the SLC amount that is in excess of the HBT. (Numerical examples are given in the January 30 ex parte.) Category A funding is calculated to be \$579 million of the \$806 million total calculated in the FBM, which would go to 40 states.¹⁶

Category B funding is available where RRPL exceeds the HBT (before addition of the Plan’s SLC increases), and funds 75% of the difference between RRPL and the HBT.¹⁷ Unlike Category A, Category B does not replace the SLC increases: Category B funding is used either to replace explicit intrastate high-cost USF funding, or to replace all or part of the current (pre-Missoula Plan) SLC. It is estimated that \$141 million in Category B funding would be required, which would go to 27 states.¹⁸

Category C funding is available only for states that already have intrastate high-cost USF funds.¹⁹ Category C funding is intended to replace intrastate high-cost funds, but “the total amount of funding a state receives from Category B and Category C funding cannot exceed the lesser of \$10 million or the state’s intrastate high-cost

¹⁵ Id. at 4.

¹⁶ Id., RM and FBM, pp. 1-2.

¹⁷ Id. at 5.

¹⁸ Id., RM and FBM, pp. 1-2.

¹⁹ The FBM discussion refers to these as “eligible” intrastate USF funds; other USF funds are not included. See id. at 5, n.7.

funding.”²⁰ It is estimated that there would be \$111 million in Category C funding, which would go to 18 states.²¹

And then there is the “Low Rate Adjustment,” which is intended “to reduce the total requirement for RM dollars.”²² If the RRPL plus the increased SLC²³ is below the LBT (i.e., less than \$20.00), and the carrier receives funds from the RM,²⁴ then up to \$2.00 will be imputed to the carrier’s SLC, “and the carrier’s draw from the RM will be reduced by the same amount.”²⁵ The carrier is not required to actually increase the SLC. The Low Rate Adjustment will not apply where a state’s intrastate access charges are cumulatively within 10% of current interstate access charges. The Low Rate Adjustment is estimated to reduce the RM by a total of \$25 million in 19 states.²⁶

The net impact of all four mechanisms is shown in the January 30 *ex parte*.²⁷ According to these calculations, only two states (Connecticut and Delaware) and the District of Columbia receive no RM or FBM; six states (Alabama, Florida, Missouri, New Hampshire, New Jersey and Tennessee) see decreases from adding the FBM; and the rest see increases in varying amounts, ranging from, e.g., Arizona, which sees its

²⁰ *Id.* at 6.

²¹ *Id.*, RM and FBM, pp. 1-2.

²² *Id.* at 6, n.7.

²³ It is not clear what would happen for the LRA if during the Missoula Plan-scheduled increases to the SLC the total increased above the LBT.

²⁴ Only five jurisdictions do not receive funds from the RM.

²⁵ *Id.* at 6.

²⁶ *Id.*, RM and FBM, pp. 1-2.

²⁷ *Id.*

funding increased by 1.5%, to Hawaii, which actually receives 740 times as much support under the combined RM and FBM as it would have with just the RM.²⁸

The January 30 ex parte also attempts to put some scale on the per-state dollars by framing them as “impact per residential line.”²⁹ But this comparison includes, in addition to the RM and FBM, the Lifeline dollars that would flow to companies from the Plan’s proposal to exempt Lifeline customers from SLC increases, as well as the increases to the High Cost Loop Fund that are also a part of the Plan. These two categories, however, represent 18% of the dollars flowing through these parts of the combined Missoula Plan and FBM, so that the total numbers remain somewhat relevant. With those caveats, on a per-line basis, the impact of the FBM ranges from \$0.62 per month in Illinois to \$16.13 per month in Wyoming and \$16.15 per month in South Dakota.³⁰

III. THE FUNDAMENTAL ASSUMPTIONS OF THE FBM ARE FLAWED.

The very first page of the January 30 ex parte points up the fundamental flaw in the FBM: “Our proposal targets new federal support to states that have the highest end-user rates, *many of which* are the result of early state initiatives to reduce switched access charges.”³¹ Likewise, in the description of the FBM it is stated:

[T]he mechanism addresses states with very high end user rates that are at or above a High Benchmark Target rate. Such states

²⁸ That is, \$8,140,964 compared to \$11,162.

²⁹ Id., pp. 3-4. As discussed below, the ex parte erroneously characterizes this impact as a “benefit” to residential customers.

³⁰ Other states show up with smaller per-line impacts, e.g., Delaware with 0.01 per month, but that comes entirely from the Missoula Plan’s Lifeline provisions, and does not involve the FBM at all.

³¹ January 30 ex parte, cover letter at 1 (emphasis added).

presumably have allowed carriers to raise end user rates to recover costs that previously were recovered through intrastate access charges.³²

This is a **very** large assumption on which to base an \$800 million support mechanism. Particularly the assumption that “states with very high end user rates” are necessarily those that raised rates “to recover costs that previously were recovered through intrastate access charges.”

Clearly, the FBM largely ignores actual intrastate access charges and the state regulatory decisions that dictated those rates. Categories A, B and C make no mention of access charges at all. Access charges come into play only in the Low Rate Adjustment, where the adjustment is not made if intrastate access charges are within 10% of interstate charges.

Another fundamental mismatch occurs in the FBM’s treatment of the SLC. Where the FBM deems rates to be too high, SLC increases are prevented by having the dollars come from the federal USF. The Missoula Plan Supporters have argued that ILECs will not be able to increase their SLCs to the caps allowed under the Plan, due to competitive pressures. NASUCA did not accept that premise, but would note that shifting costs from the SLCs (arguably not automatic, because of the alleged competitive pressure) to the USF (which is guaranteed, because it will be paid by other companies’ customers) further enhances the revenue position of the ILECs, and dampens competitive pressures. But this is exactly what the Missoula Plan is all about: protecting ILEC revenue from competition.

³² January 30 ex parte at 1 (emphasis added). The issue of whether these are really states with “very high end user rates” is addressed in Section IV.

IV. THE FBM'S ATTEMPT TO ACHIEVE RATE COMPARABILITY IN THE CONTEXT OF THE MISSOULA PLAN IS FUNDAMENTALLY MISGUIDED.

It should be clear from the outset that the FBM's real concern is not with intercarrier compensation. Rather, as stated in the cover letter, "The proposal we have crafted ... relies on national residential 'rate benchmarks' **to establish comparability among states.**"³³ Rate comparability among states is, of course, one of the goals of the Act, which seeks to ensure that "consumers in all regions of the nation ... have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."³⁴

NASUCA objected to the Missoula Plan's use of federal universal service funding as a means of preserving carriers' revenues, in the context of reform of intercarrier compensation.³⁵ As noted above, the FBM adds \$800 million in USF to the Missoula Plan, making the issue even more serious, and making it even more clear that this change could not and should not be adopted in the current proceeding. At the very least, these issues should be referred to the Federal-State Joint Board on Universal Service, pursuant to 47 U.S.C. § 254(a)(1).

In one specific respect, the FBM actually preempts an ongoing Commission investigation, that being the remand from the 10th Circuit Court of Appeals of the FCC's

³³ January 30 ex parte, cover letter at 1 (emphasis added).

³⁴ 47 U.S.C 254(b)(3).

³⁵ It should be recalled that NASUCA's ICC proposal allowed carriers to resort to the USF if the loss of revenues produced rates that were not reasonably comparable, under the terms of the current USF, with no guarantees.

high-cost support mechanism for non-rural telephone companies.³⁶ In its first rejection of the Commission’s definition of reasonable comparability, the Court insisted on a more precise definition “that reasonably relates to the statutory principles.”³⁷

This attempt to establish comparability also suffers from a narrow definition that goes far beyond most of what has previously been proposed to the Commission. The Commission at one time found that rates greater than 135% of the national average were not reasonably comparable; currently the standard is that rates more than two standard deviations of the national average are not reasonably comparable.

The FBM established \$25.00 as the “high rate” where additional support is needed, and essentially adopts a \$20.00 rate as the point below which no additional assistance is needed. This effectively supplants the Commission’s requirement to define reasonable comparability as reinforced by *Qwest II*.

The FBM’s attempt to adopt this narrow range of rates, consisting only of the 1FR rate and the SLC, appears to be an attempt at national ratemaking, which is consistent with the overall preemptive thrust of the Missoula Plan. NASUCA addressed and rebutted that preemptive thrust in the earlier comments, which also apply to this aspect of the FBM.

V. THE FBM’S ATTEMPT TO CALCULATE CONSUMER BENEFITS IS FUNDAMENTALLY FLAWED.

The presentation of the FBM includes a chart that purports to show “Model

³⁶ *Qwest Communications v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest II*”); see also *Qwest Corporation v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (“*Qwest I*”).

³⁷ *Qwest I*, 258 F.3d at 1202.

Results by State with Estimates of Net Benefit to Residential Customers.”³⁸ The chart provides total residential access lines for each state, along with the amount of the Missoula Plan Restructure Mechanism attributable to each state; the amount of Lifeline dollars attributable to each state; and the Missoula Plan increases to the High Cost Loop Fund attributable to each state. These dollar totals are combined and divided by the number of residential access lines to calculate a “total impact on residential customers” per line per month. This is compared to a calculated \$0.38 per month incremental USF assessment based on working numbers and special access connections, to yield a “Net Benefit to Residential Customers.” It is asserted, based on these calculations, that “[t]he FBM proposal provides net positive support for 39 states.”³⁹ This statement, and the chart on which it is based, are so full of holes that to accept them would be Foolish Beyond Measure (“FBM”).

First: The “impact” calculation totally ignores the Missoula Plan’s SLC increases that occur for all customers whose rates do not exceed the High Benchmark Target. These increases would swallow the purported net benefit for most states.

Second: Although the calculation of the RM impact purportedly “[i]ncludes CLEC/CETC payments,”⁴⁰ (reflecting portability of the RM payments⁴¹) there is no

³⁸ Attached to January 30 ex parte.

³⁹ January 30 ex parte at 7.

⁴⁰ See “Projected Per Unit USF Assessment Charge Per Month” page.

⁴¹ About which there was considerable controversy.

indication of portability **for the FBM**.⁴² Currently, CETCs collect 28.5% of the high-cost fund; adding CETCs would, therefore add \$230 million to the FBM cost estimates.

Third: Most fundamentally, this calculation directly equates the impact on (i.e., dollars flowing to) telephone companies from the RM, the FBM and the HCLF with the purported impact on residential customers. The RM -- which represents the bulk of these dollars -- does not flow directly to customers. Neither does the HCLF. In the FBM, Category A and B and possibly Category C flow to customers; likewise, the Lifeline benefits go to customers. This makes the assertion of a “total impact on residential customers” as a per-line benefit from these dollars a substantial exaggeration.

Fourth: Like the calculations in the Missoula Plan itself, the calculation of benefits based on incorporating a numbers-based (and connections-based) USF assessment mechanism is misleading.⁴³ And by assuming first, as discussed above, that all the benefits flow to residential customers while ignoring the costs imposed on non-residential customers of the USF assessments required by the FBM, this presentation further muddies the waters.

It is certainly possible that these attempts at calculating the “benefits” of the FBM are well-intentioned uses of fairly obscure data. Regardless of intentions, however, these calculations cannot be taken at face value. In fact, the problems with the calculations are such as to make them worthless as a means to evaluate either the Missoula Plan itself or the Plan amended by the FBM.

⁴² The FBM is ostensibly based on “the effects of the Plan on universal service in states with high rates and rural populations.” January 30 ex parte, cover letter at 1. The FBM therefore would have to be portable, like the rest of the high-cost USF.

⁴³ See NASUCA Comments at 29-30. As with the Plan itself, the change in the assessment mechanism is not a necessary part of the FBM.

VI. THE FBM WILL IMPOSE UNSUPPORTABLE BURDENS ON THE USF.

In its Reply Comments, NASUCA set out the full impact of the Missoula Plan on the USF as \$2.778 billion.⁴⁴ With the modifications to the Missoula Plan wrought by the FBM, the total impact on the USF can now be calculated as follows:

Impact of Restructure Mechanism	\$1,251 million
Additional RM Payments to CETCs	\$ 357 million
Impact of FBM	\$ 806 million
Additional FBM Payments to CETCs	\$ 230 million
Impact of HCL Changes	\$ 252 million
Additional HCL Payments to CETCs	\$ 72 million
Impact of Change in % of Support	\$ 22 million
Impact of Option to Use Non-Rural	\$ 22 million
Additional Payments to CETCs	\$ 13 million
Impact of Lifeline Exemption	\$ 225 million
TOTAL KNOWN USF INCREASES	\$3,250 million

The known increases caused by the Missoula Plan as amended by the FBM will amount to a 46% increase in the current \$7 billion USF.

Although supporters of the Missoula Plan took issue with NASUCA's claim that the original Missoula Plan imposed a 32% increase on the USF, the FBM's own calculations show the impact will be a 40% increase. On page 5 of the Appendix to the FBM, there is a calculation of the incremental change in the proposed per unit USF assessment caused by the Missoula Plan as amended by the FBM.⁴⁵ As shown on that page, the per unit USF assessment will rise from \$0.95 per unit to \$1.33 per unit, an increase of \$0.38 per unit, or 40%. Because the FBM calculations do not include

⁴⁴ NASUCA Reply Comments at 12-14.

⁴⁵ NASUCA has previously pointed out that the per unit assessment method included with the Missoula Plan's calculations does not exist, is not supported all Missoula supporters, and is not actually part of the Missoula Plan. See NASUCA Comments at 29.

additional payments of FBM support to CETCs under the FCC's portability rules, the estimates of the ultimate impact on the USF are understated. Nevertheless, whether the increase is 40% or 46%, the final conclusion is the same: The increase in the USF caused by the FBM is excessive and not supportable.

VII. CONCLUSION

The FBM is posed as a solution for the Missoula Plan. As presented, however, it is definitely part of the problem. The total impact on the USF of the Missoula Plan as modified by the FBM can be calculated as \$3.25 billion, an almost 50% increase in the current \$7 billion fund. Both the original Missoula Plan and the Plan as modified by the FBM must be rejected.

Respectfully submitted,

/s/ David C. Bergmann

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
bergmann@occ.state.oh.us

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380