State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date : January 18, 2007

To : The Commission
(Meeting of January 25, 2007)

From : Gretchen Dumas, Legal Division

Subject : The Missoula Plan for Intercarrier Compensation Reform
(FCC CC Docket No. 01-92, DA 06-1730)

INTRODUCTION

The Federal Communications Commission ("FCC") is seeking comments on its intercarrier compensation reform proposal, known as the "Missoula Plan," ("Plan") in its Docket, *In the Matter of Developing a Unified Intercarrier Compensation Regime*. In the Comments that the Commission authorized staff to file on October 25, 2006, the Commission stated its concern that the Plan's proactive Edge proposal does not have a broad consensus of support.

Staff now recommends that the Commission file Reply Comments supporting certain changes to the Plan in an effort to help move the parties to a consensus on this issue. These changes are intended to mitigate the Edge proposal's negative impact on competitive carriers while continuing to ensure universal service and reasonable rates for rural customers. Additionally, our Reply Comments recommend that the Plan require carriers to flow through to their customers 100% of the savings resulting from any intercarrier compensation rate reduction. Reply comments are due February 1, 2007.

DISCUSSION

In many respects, the Plan appears to favor incumbent Local Exchange Carriers ("LECs") over their competitors. Thus, to neutralize the disparate treatment of carriers, the Commission's October 25, 2006 Comments suggested several changes to the Plan. In particular, we recommended that the FCC reduce High Cost Loop Fund support in order to encourage carriers to operate in a more economically efficient manner. Additionally, we urged the FCC to limit any LEC revenue recovery under the Plan to actual losses.

In the proposed Reply Comments, we recommend that the Commission seek modifications to the Edge proposal. The Edge refers to the location on a carrier's network where it would receive traffic for routing within its network and where it would perform the termination function for traffic received from other carriers. Under the Missoula Plan, each carrier would be required to designate at least one Edge on its network in its LATA in which it has facilities. Our recommended modifications to the Edge proposal are designed to lessen considerably any negative impact on competitive carriers, but still provide to rural carriers the support necessary to preserve universal service and reasonable rates in rural areas. In this regard, our Reply Comments should focus on four aspects of the Edge scheme.

First, the Edge scheme should apply only to competitive carriers, and certain rural carriers. This limitation is necessary in order to address the uncertainty around the legality of the Edge proposal under Section 251(c)(2)(B) of the Communications Act of 1934 ("Act"), as it applies to non-rural incumbent LECs.

Opponents of the Missoula Plan have raised a legitimate concern that the Edge proposal violates, if not the letter of this law, then at least the spirit of Section 251(c)(2)(B) of the Act. Even though the Plan would continue to allow requesting carriers to physically interconnect with a non-rural incumbent LEC at any technically feasible point as required under Section 251(c)(2)(B), the requesting carrier would have to pay interconnection fees as if it had connected at the incumbent LEC's designated Edge.

It is questionable whether a court would uphold an FCC Order applying the Edge requirement to non-rural incumbent LECs. Even if such a ruling were upheld, such an FCC Order would still result in years of litigation and uncertainty to the benefit of no one. Without a statutory change, it would appear to be neither feasible nor judicious to go down this path.

However, there is no basis for concluding that there is a legal impediment to requiring competitive carriers, rural telephone companies or two percent carriers to designate Edges for interconnection purposes. Section 251(c) of the Act does not apply to competitive carriers, and Section 251(f) of the Act permits commissions to exempt rural telephone companies and two percent carriers from the requirements of Section 251(c). If such a requirement is imposed, it should help end the numerous interconnection disputes between these entities. For this reason, our Reply Comments should recommend the Edge proposal be modified so that it applies to rural telephone companies, two percent carriers and competitive carriers only. All other incumbent LECs would continue to be governed by the requirements of Section 251(c)(2)(B) of the Act. (Note that these suggested modifications would treat carriers within Track 1 differently with respect to having to designate an Edge in each LATA. ILECs in Track 1 would not designate Edges. However, competitive carriers in Track 1 would have to designate an Edge.)

Secondly, our reply Comments should suggest that the FCC reject the Plan's proposal to allow a Track 2 or Track 3 carrier to designate an end office as an "Edge" when the end office subtends the carrier's own access tandem. However, this proposed change is recommended only if the FCC adopts the Plan's proposed Rural Transport Rules at the same time.

Thirdly, it is recommended that our proposed Reply Comments actively support the proposed Rural Transport Rules. These rules will help ensure universal service and reasonable rates in rural areas.

Fourthly, to provide more balance to this scheme, the FCC should also adopt lower transit rates than proposed by the Plan so that the costs of interconnection to competitive carriers would not be too burdensome as to hinder the growth of competition.

Finally, our Reply Comments should recommend that the Plan require carriers to flow through to their customers 100% of the savings resulting from any intercarrier compensation rate reduction.

ACTION REQUESTED

Legal Division requests authorization to submit Reply Comments supporting the changes to the Missoula Plan's Edge proposal that are discussed above.

Assigned Staff: **Gretchen Dumas (GTD, 3-1210); Faline Fua (FUA, 1-1989); Fe Lazaro (FNL , 3-2627); Roxanne Scott, (RW2. 3-5263) and Victor Banuelos, (VFB, 3-4223).**