

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

September 22, 2006

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: FCC Intercarrier Compensation-
Workshop and Solicitation of Comments on
the Missoula Plan
Docket No. M-00061972

Dear Secretary McNulty:

Enclosed please find for filing an original and ten (10) copies of the Office of Consumer Advocate's Reply Comments in the above-captioned proceeding.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joel H. Cheskis".

Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. #81617

Enclosures

cc: Chairman Wendell F. Holland
Commissioner Bill Shane
Commissioner Terrance J. Fitzpatrick
Vice Chairman James H. Cawley
Commissioner Kim Pizzigrilli
Honorable Kandace Melillo, ALJ
Joseph Witmer/Law Bureau

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II. REPLY COMMENTS

A. The Missoula Plan Is Unnecessarily Redundant In Its Attempts To Reduce Phantom Traffic.

During the September 11th workshop, Embarq asserted that the Missoula Plan is an attempt to fix phantom traffic through increased labeling and record sharing requirements.² The OCA supports efforts to decrease phantom traffic. However, the Missoula Plan addresses the issue of phantom traffic in a redundant and inefficient manner.

Phantom traffic consists of calls traversing the public switched network that lack information required to properly bill that traffic. For example, a terminating provider may receive a call but cannot determine whether the call is an intrastate toll call or an interstate toll call. AT&T and North Pittsburgh Telephone Company support the Missoula Plan because the plan will supposedly reduce the amount of phantom traffic.³ However, there are two ways to reduce phantom traffic. One way is to establish a set of rules that require each call to be identified and the second way is to reduce the incentive to create phantom traffic. The Missoula Plan adopts both methods. In adopting both methods, the Missoula Plan is unnecessarily redundant and therefore should be modified to eliminate such redundancy. Given that it establishes a set of rules to govern traffic identification, it is not necessary to adopt its rate unification plan for the purpose of eliminating phantom traffic.

The Missoula Plan's signaling rules apply to all traffic associated with the public switched network. These rules apply to traffic that originates on, terminates on or transits the public switched network. Every originating carrier is required to include the identifying information associated with the call to the carrier the call is handed off to. The identifying information varies depending on the type of technology used by the carriers. Any intermediate

² Tr. 107; *see also*, Tr. 36, 45, 165, 175, 191 and 209.

³ Tr. 35-37, 45.

carrier, who transports the call from an originating to a terminating carrier, is prohibited from stripping off the identifying information. The Plan also contains a method for transporting the information from the originating to the terminating carrier.⁴ Therefore, the terminating carrier will be provided sufficient information to bill the call. By consensus, the identifying information is the telephone number of the originating caller.⁵

Alternatively, unifying the terminating rates would reduce phantom traffic because the unified rate structure reduces the incentive to create phantom traffic. However, if the goal of the Missoula Plan is to reduce phantom traffic, it is only necessary to adopt the Plan's set of governing rules. Unifying rates is not necessary. Moreover, intercarrier rate unification in the manner suggested by the Plan creates many problems, including substantial pressure on universal service funding, increases to subscriber line charges, price discrimination, and the creation of subsidies that favor high volume users. These problems further support reducing the redundant attempts in the Missoula Plan to reduce phantom traffic.

The Missoula Plan is unnecessarily redundant in its attempts to reduce phantom traffic. The Commission should encourage efforts to reduce such redundancy so as to reduce additional problems created by the Missoula Plan.

B. It Is Not Necessary Or Appropriate At This Time To Make A Determination Of Any Revenue Impact Of The Missoula Plan On Pennsylvania's Incumbent Local Exchange Carriers Under Chapter 30.

In their August 23, 2006 Secretarial Letter, the Commission sought input on the impact of the Missoula Plan on, *inter alia*, "the setting of rates for intrastate regulated telecommunications

⁴ The Plan, at § V-B.

⁵ Id., at § V-A.

services under the Chapter 30 law, 66 Pa.C.S. §§ 3011-3019.”⁶ Through their Comments, and subsequent presentations to the Commission, some parties raised the issue of whether any changes in intrastate access rates as a result of the adoption of the Missoula Plan by the FCC will require either 1) revenue neutral rate rebalancing under Section 3017(a) or 2) an exogenous event filing under the incumbents’ Chapter 30 Plans.⁷

The OCA submits that the Commission should not decide the issue of whether any FCC action will require a revenue neutral rate rebalancing or trigger exogenous event recovery under the incumbents’ individual Chapter 30 Plans at this time. The OCA cautions against the Commission making any determination regarding how any potential changes to intrastate access charges may affect the Chapter 30 exogenous events clauses or Section 3017 rate rebalancing. These questions are not properly before the Commission at this time, particularly given that no party to this proceeding introduced the specific Chapter 30 plans of the individual incumbents. While the access charges that the FCC is considering may require modifications to intrastate access rates, it is premature to determine whether such potential actions would support either revenue neutral rate rebalancing or exogenous event treatment of any revenue changes under the various Chapter 30 plans. It is entirely unclear what intercarrier compensation reform, if any, the FCC will undertake, and when that will occur.

There are a variety of exogenous events clauses that were approved by the Commission for the various Chapter 30 companies. To the extent that a company files a Petition seeking exogenous event cost recovery in response to any actions by the FCC, each Petition must be examined on its own merits because the exogenous events clauses in the respective Chapter 30 plans vary. The Commission cannot determine whether revenue loss, if any, as a result of the

⁶ Secretarial Letter at 2.

⁷ *See e.g.*, Tr. 185, 190 and 195.

FCC adopting the Missoula Plan would trigger recovery under an exogenous events clause until each individual exogenous events clause is examined under the relevant facts. Such examination cannot take place at this time.

Furthermore, it is unclear whether Section 3017(a) would be triggered by the adoption of any provision of the Missoula Plan. The Commission should not make such a determination as part of this proceeding. In addition to the substantial uncertainties that pertain to any possible exogenous event recovery, any loss in access revenues incurred by a Chapter 30 company as a result of the Missoula Plan should be considered in light of any additional revenues received by that Company as a result of implementing the Missoula Plan as well. Such additional revenues could be recovered either through an increase in the Subscriber Line Charge (“SLC”) proposed in the Missoula Plan or any one of the other funding mechanisms created by the Plan.

Furthermore, as with any possible exogenous event recovery, each Company’s net revenue loss or gain must be examined on an individual basis. The Commission cannot determine as part of this workshop whether any rate rebalancing under Section 3017 will be necessary.

To the extent that the Commission does reach the issue of whether any rate changes as a result of the FCC’s adoption of the Missoula Plan will require revenue neutral rate rebalancing or exogenous event recovery, the OCA submits that the Commission should conclude that revenue that otherwise would be lost through the competitive process should not be preserved through rate rebalancing or exogenous event treatment.⁸ That is, regulatory efforts should not guarantee continued revenue recovery from sources that are no longer relevant. As Vice Chairman Cawley noted in the September 11th workshop, the individual companies’ revenues and rates of return could be considered as part of the Missoula Plan,⁹ particularly as it is considered that it is

⁸ See e.g., Tr. 122.

⁹ See e.g., Tr. 31, 90 and 142.

possible that incumbent carriers receive more revenues than they lose if the FCC adopts the Missoula Plan.¹⁰ The Commission must also recognize that the Chapter 30 plans are price cap plans, not a means to preserve revenue that is otherwise lost as a result of competition.

Therefore, the OCA submits that it is not necessary or appropriate at this time for the Commission to determine any revenue requirements related to any possible changes that may arise if the FCC adopts all or a portion of the Missoula Plan. Such revenue changes have not been specifically proposed in this proceeding and there is no evidence upon which such a determination could be made.

C. Each Track In The Missoula Plan Treats Access Shift And Reciprocal Compensation Differently.

During the workshop, the OCA and the Rural Telephone Company Coalition (“RTCC”) appeared to be providing different and conflicting interpretations of the amount of revenue loss, also known as Access Shift, a carrier would be allowed to recover.¹¹ The interpretations, however, are not conflicting. The differences are explained by the fact that the Missoula Plan is not one plan. Rather, it is a combination of three plans, one plan for each track. The OCA was discussing Track One revenue loss, while RTCC was discussing Track Three revenue loss.

For Track One carriers, the Access Shift Per-Line is the amount of revenue that the Missoula Plan will allow a carrier to recover from SLC increases or the Restructure Mechanism in order to offset revenue reductions associated with access rate reductions. The OCA noted that net reciprocal compensation is excluded from the calculation of the Access Per-Line.¹² Further, the OCA also asserted that because ILECs pay more reciprocal compensation than they receive,

¹⁰ Tr. 69-73.

¹¹ Tr. 88, 181-182.

¹² OCA Comments, at 9-10.

reductions in reciprocal compensation rates combined with the net flow of reciprocal compensation minutes implies that there is a net revenue increase associated with reciprocal compensation traffic.¹³ Excluding the reciprocal compensation revenue from the Access Shift Per-Line, therefore, unfairly increases the Access Shift Per-Line, the SLC rates and the Restructure Mechanism funding.

The RTCC, on the other hand, stated that net reciprocal compensation is included in the calculation of a carrier's lost revenue.¹⁴ The RTCC statement appears to contradict the OCA statement. However, this apparent conflict is not a true conflict because the statements reference different carrier tracks. The OCA statement refers to the definition of Access Shift Per-Line for Track One carriers,¹⁵ while the RTCC statement refers to the definition of revenue loss for the Track Three carriers.¹⁶ Therefore, both statements are correct.

D. The Commission Should Encourage The FCC To Preserve State Authority Over Intrastate Access Rates.

Through their Comments, and subsequent presentations to the Commission, the issue arose regarding whether and to what extent the FCC should preempt the Commission pertaining to intrastate access rates.¹⁷ The Commission did not specifically seek comment on this issue in its August 23, 2006 Secretarial Letter. However, in response to the issues raised by other parties, the OCA submits that it is a vital consumer protection that states are able to meet the specific needs of their state with regard to intrastate access charges.

¹³ Id.

¹⁴ Tr. 181-182.

¹⁵ The Plan, at § VI-A-1-b-ii.

¹⁶ Id., at § VI-A-1-e-ii.

¹⁷ *See*, Tr. 136, 150 and 154.

By ensuring state authority over intrastate access charges, the Commission will best be able to recognize and incorporate the rate impacts attributable to reform efforts already underway in Pennsylvania and the impact on consumers' bills. The Commission should be able to maximize the use of both federal and state law and resources when addressing intrastate access charges. Stripping states of authority to enact and enforce state-specific intrastate access rules is not sound public policy and may inappropriately chill states' consideration of state-specific issues. Furthermore, it is unclear whether the legal standard for preemption has been satisfied, thus, subjecting any preemption to appellate scrutiny.¹⁸

It is unclear whether any federal statute allows the FCC to preempt state authority over intrastate access rates. In fact, the federal Telecommunications Act seems to emphasize joint, not exclusive, federal and state efforts regarding access charges in order to ensure that universal service is available at just and reasonable rates. Preemption of state authority may thwart this ultimate goal. Other parties to the FCC proceeding have more clearly identified the uncertainty regarding the FCC's ability to preempt state authority over intrastate access rates.¹⁹

Therefore, the Commission should urge the FCC to carefully consider adopting an intercarrier compensation plan that is voluntary, and non-preemptive, with regard to intrastate access rates. A voluntary opt-in provision, instead of a preemptory shut out provision, will effectively encourage states to reform intrastate access charges and preserve universal service. The Commission should encourage the FCC to adopt a reform solution that encourages effective state participation, not exclude it.

¹⁸ See, Louisiana Public Service Comm'n et al. v. Federal Communications Comm'n, 476 U.S. 355, 368-369, 106 S.Ct. 1890, 1899, 90 L.Ed.2d 369, 381-82 (1986) ("the critical question in any preemption analysis is whether Congress intended that federal regulation supersede state law").

¹⁹ See e.g., In the Matter of Developing A Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Reply Comments of the National Association of State Utility Consumer Advocates (July 20, 2005) at 14-20.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully requests that this Commission consider these Reply Comments as part of its public workshop and facilitated discussion regarding the Missoula Plan that was recently submitted to the Federal Communications Commission.

Respectfully submitted,



Philip F. McClelland
Senior Assistant Consumer Advocate
Attorney I.D. No. 23165
Joel H. Cheskis
Assistant Consumer Advocate
Attorney I.D. No. 81617

For: Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

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