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

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; and	)))	CC Docket No. 96-98
Response to Regulatory Flexibility Act Analysis		DOCKET FILE COPY ORIGINAL

COMMENTS

of the

RURAL TELEPHONE COALITION

May 30, 1996

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SUMMARY

The overriding debate in this proceeding is whether the Commission's proposal to establish detailed national rules applicable to every aspect of interconnection is consistent with the language and intent of the Telecommunications Act of 1996 and sound public policy. A large number of states and many in the industry echoed the position stated in the initial comments of the Rural Telephone Coalition ("RTC") demonstrating the error of the Commission's approach. Most of the commenting parties supporting the approach of the *NPRM* rely on their perception of what is needed to advance their competitive interest. These arguments fail to demonstrate how exhaustive, detailed federal regulation is consistent with a Congressional plan which relies on individual negotiations, with strong incentives to reach agreement, and state commission resolution of disagreements. Nor do the proponents of regulation adequately explain a legal basis for preemption of state action, or why Congress chose to leave Section 2(b) of the 1934 Act in place.

To the extent some state commissions may need assistance, this can readily be provided by the Commission, in concert with NARUC, without imposing rigid requirements nationwide which will nowhere be optimized for local conditions.

Interexchange carriers and others seek to broaden the scope of Sections 251 and 252 from interconnection of competing providers of telephone exchange service and exchange access to a solution to their long term goal of reducing the access charges they pay. These arguments are not only inconsistent with the express language and structure of the Act and the Congressional

intent, but, if adopted by the Commission, would shift responsibility for interstate access to state commissions, while creating a monstrous job for the new universal service fund.

At the same time, competitive LECs and others are promoting the destruction of the thousands of existing Extended Area Service agreements among incumbent LECs by claiming these are intended to be included in the agreements required to be filed , approved and be made available to all carriers. These arguments are shown by the comments of the RTC, USTA and others to be unfounded. Elimination of multicompany EAS will cause great rate disruption around the country, while opening the contracts to all would destroy their financial viability. The infrastructure sharing provisions of the Act demonstrate that Congress recognized a special relationship between large and small, non-competing LECs.

Should the Commission proceed to prescribe detailed pricing rules, it must consider the inherently different economic circumstances faced by rural telephone companies. Determination of wholesale discounts must limit all such discounts to net costs actually avoided, rather than become a means for gratifying AT&T's desire to avoid the risk of investment and capital expenditure needed to create real competition. Similarly, neither proxies nor bill and keep arrangements are adequate substitutes for a recognition of the real costs incurred by LECs to provide their ubiquitous service

Section 251(f) provides for a state-implemented means of recognizing the limitations on the benefits of competition in areas served by small and rural telephone companies. No FCC regulation is required by the Act, but should the Commission wish to provide guidelines for voluntary use by state commissions, it must reject the proposals of those who would simply write the exemptions, suspensions and modifications of the section out of existence. Contrary to the views of these parties, the FCC may not limit the applicability of this subsection to less than the circumstances provided in the plain language of the statute.

The proposals that would impose incremental costing methods to derive prices for interconnection elements do not satisfy the requirements of the Act. Long-run incremental cost ("LRIC") and other extensions of this theory are only one analytical tool among others which must be considered. The comments explained that a simple application of the theory would cause LECs to fall short of full cost recovery, would discriminate against the LECs in their service offerings, would not allow a reasonable profit, and would hinder commitment to network expansion. Costs in addition to those that are incremental must be addressed including joint, common, and those residual to the regulated environment and eligible carrier status in which incumbent LECs operate.

In responding to the LRIC proposals, the comments demonstrate that the theory is not well established. In any event, practical experience with application is lacking, and what is available indicates it is fraught with subjective assumptions and dispute. The proponents of LRIC-type pricing methods, who also stand to gain the most if interconnection is offered at the lowest incremental price, have distorted the use of the theory and turned it on its head. The Commission should limit pricing guidelines, if it adopts any at all, to broad ranges of minimum and maximum limits.

The models claimed as workable solutions to TSLRIC are not any more developed or substantiated than other proxy models such as the BCM. All of the models are replete with assumptions that have not been properly tested or evaluated for predictive value.

The LEC industry is in general agreement over technical interconnection issues. Designation of interconnection points should be flexible to accommodate different LECs and technology changes, and technical feasibility should not be extended to technical possibility. LECs cannot be expected to bear the cost of interconnection or the cost of maintaining excess capacity for others. Many commenting parties point to the differences between small and large and between urban and rural LECs, arguing persuasively against a standard approach to interconnection terms.

The Commission's conclusion that the Regulatory Flexibility Act is not applicable to incumbent LECs is in error. The Commission has not complied with the requirement that it determine which are small entities in consultation with The Small Business Administration.

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Response to Regulatory Flexibility Act Analysis		

REPLY COMMENTS
of the
RURAL TELEPHONE COALITION

The Rural Telephone Coalition ("RTC") files these Reply Comments in response to the comments filed on May 16, 1996, in the proceeding captioned above.[1]

The Rural Telephone Coalition is comprised of the National Rural Telecom Association ("NRTA"), the National Telephone Cooperative Association ("NTCA"), and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO").

I. CONGRESS INTENDS CARRIER NEGOTIATIONS, SUBJECT TO STATE SUPERVISION AND APPROVAL, TO PLAY THE PRIMARY ROLE IN IMPLEMENTING THE ACT'S INTERCONNECTION REQUIREMENTS.

The RTC demonstrated in its opening comments (pp.2-15) that (a) the plain language of the Act, (b) the new state and federal jurisdictional divisions, (c) Congress's competitive, deregulatory and universal service purposes, (d) the structure of the interconnection regime prescribed by Congress and (e) sound public policy all compel regulatory restraint from the

[1] Unless otherwise indicated, all citations herein are to comments filed in this proceeding on May 16, 1996.

Commission. Other parties, including NARUC and several state commissions, also urge the Commission to refrain from adopting the detailed, prescriptive rules and restrictions proposed in the *NPRM* for the carrier interconnection provisions in Sections 251 and 252 of the Act.[2] There was particularly strong and cogent support for reading the statute straightforwardly as conferring rulemaking authority on the Commission only where the statute explicitly so states.[3] Several commentors stressed that the Act provides standards for the states to use in the arbitration process when carrier negotiations have not settled pricing terms, so that federal rules about prices and cost calculations are neither authorized nor necessary.[4]

Those that support FCC prescription of uniform nationwide interconnection requirements, especially for pricing and cost identification, fall into three general groups: First, there are states such as North Dakota, which fears it lacks the resources to make the necessary determinations.[5] Second, there are those who want to impose their views on all states and carriers.[6] Third, there are others that urge general national guidelines rather than detailed federal micro management.[7]

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[2] NARUC at 6-25; Maine Public Service Commission *et al.* ("the Eight Rural States") at 1-2; New York DPS at 5-14.

[3] NYDPS at 5-8 (The Act is and must be explicit when conferring FCC jurisdiction, leaving remaining authority over local and intrastate requirements, terms and prices for the states).

[4] *E.g.*, Missouri PSC at 7 (FCC lacks authority to prescribe pricing standards for interconnection, unbundled elements, collocation, resale at wholesale rates or reciprocal compensation arrangements); Texas PUC at 21 (opposing nationwide pricing and pointing out that Texas already uses the cost standard the *NPRM* proposes); NASUCA at 5 and 8 (agreeing with *NPRM* that FCC lacks authority over local rates, but expressing concern lest excessive loop costs raise local rates).

[5] NDPSC at 1-2; *see also* Kansas PSC at 4.

[6] *E.g.*, Department of Justice ("DOJ"), *passim*; Sprint at 42-46; CompTel at 13-23; Frontier at 3-21; and AT&T at 15-83.

[7] Indiana URC Staff at [illegible]; *see also* Oklahoma PSC at 1-3.

While the law allows some limited federal guidance, the RTC believes that the law precludes the detailed, uniform national requirements, imposed by Commission action, that are proposed in the *NPRM*. AT&T argues (p.4) that the Act not only requires the Commission to elaborate upon all the statutory requirements and standards, but that its terms also "make it explicit that these regulations are to preclude state-by-state variations in the definition of the Act's minimum requirements in the § 252 proceedings and otherwise." AT&T's claimed "explicit" statutory terms do not exist, and AT&T has ignored truly explicit evidence in the Act that Congress did not mean to substitute detailed federal management of intrastate and local interconnection for the explicit reservation of state jurisdiction in Section 2(b) (47 U.S.C. § 152(b)). In short, as the ICC indicates (p. 15), the law actually extends state authority over interconnection issues.

The ICC (pp. 6-7) explains that the new law does not eclipse the section 2(b) reservation. In fact, the ICC continues, proposals in earlier telecommunications legislation to exclude interconnection from the reach of 2(b) were omitted from the legislation that this Congress passed.

Bell Atlantic also shows (pp. 5-8) that the proposed preemptive FCC rules do not meet the applicable standards for preemption, given the exacting reading the Supreme Court gave section 2(b) in *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986) ("*Louisiana*"). The Commission's speculation that an act adopting nationwide telecommunications policy implies a desire for nationwide uniformity cannot overcome the "congressional denial of power" found by the *Louisiana* court under section 2(b).[8] Moreover, there is ample "explicit" statutory provisions

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[8] *Louisiana*, 476 U.S. at 374.

to support the states' paramount jurisdiction here: Section 251(d) expressly preserves existing state regulations, policies and requirements unless they are inconsistent with or will obstruct implementation of the interconnection provisions; Section 261(b) affords similar deference to new and future state regulations, as long as they are consistent with Sections 251-261; and Section 601 of the 1996 Act reaffirms -- in language reminiscent of the bar to FCC preemption found in *Louisiana* -- that the changes made by the new law cannot be "construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

Contrary to AT&T's claim to deference for an FCC jurisdictional interpretation, this is a clear case where deference to the Supreme Court's interpretation of Section 2(b) is indicated. Instead, AT&T asserts "explicit" preemption based on a logical fallacy. AT&T takes the Act's simple statement in Section 251 (d) that the Commission, in prescribing and enforcing regulations to implement Section 251, "shall not preclude the enforcement" of state access and interconnection regulations that are consistent with and do not impede implementation of the Act's requirements. AT&T then stands this express limitation on federal authority on its head, claiming that it requires preemption of any state requirements that are not consistent.[9] This effort to rewrite the statute cannot satisfy the *Louisiana* test. It is significant that, even where Congress's preemptive purpose is clear, in removing state and local barriers to competition,

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[9] AT&T twists and contorts the statutory language to contend that: "Section 251(d)(3) makes it explicit that the Commission will 'prescrib[e] and enforc[e]' regulations that will 'preclude the enforcement of any regulation, order, or policy of a State commission' that establish 'access and interconnection' obligations that are determined to be '[in]consistent with the requirements of [Section 251]' or that would 'substantially prevent implementation of the requirements of this Section [251]' or the 'purposes of this part' of the 1996 Act." AT&T at 5, emphasis added, footnote omitted. In fact, the misconstrued passage's effect is to limit FCC jurisdiction to the specific grants of preemptive rulemaking power that are "explicit" in Section 251, such as prescribing unbundled network elements and number portability requirements.

Congress provided for Commission preemption of state barriers only after a full notice and comment proceeding (Section 253(d)). The sweeping preemption by implication for which AT&T claims deference lacks both legal support and logical validity. The Commission has no choice but to refrain from most of the detailed prescriptions discussed in the *NPRM*.

The need to defer to carrier negotiations and state arbitration does not deprive the Commission of a vital role in implementing the Act's interconnection regime.[10] Although it cannot impose detailed prescriptive regulations or control carrier negotiations or the state mediation and arbitration process (except, of course, for the regulations it is expressly authorized to adopt), the Commission should provide guidance for implementing the interconnection and all other provisions of the Act consistently and coordinate the timing of state and federal implementation.[11]

The assertions of the Department of Justice that incumbent LECs will "slow roll" the negotiation process fails to consider the major incentives to LECs to reach a quick and harmonious solution. First, negotiated agreements are exempted from the standards in Sections 251(b) and (c), but arbitrated agreements are not. Second, for BOCs, which control most of the competitively attractive markets, the carrot held in front of them is the freedom from the interLATA restriction available under Section 271.

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[10] Deference would avoid the legal and constitutional challenges that some of the *NPRM* proposals are likely to provoke

[11] Prompt FCC guidance is necessary to prevent premature rulings inconsistent with rules the Commission is actually required to adopt under other sections of the Act. Such issues include the Ameritech demands related to Extended Area Service agreements between non-competing LECs. Premature cancellation of EAS contracts would interfere with implementation of other parts of the Act, such as the infrastructure sharing mandate of Section 259 and the universal service requirements of Section 254.

The Commission should also collect and disseminate information about state interconnection implementation decisions, as well as State approval and arbitration determinations. With that kind of nonprescriptive guidance, states like North Dakota can benefit from other states' experimentation in transitioning to competition. In fact, all states can benefit from evaluating approaches developed in other states against the particular market facts about the LEC service areas within their boundaries. That approach will also give a fair trial to the marketplace negotiation and state arbitration system enacted by Congress.

That local and intrastate policies may be different from state to state without comprehensive national prescriptions is not the disaster some suggest.[12] To begin with, multistate LEC operations have, since the dawn of telephone regulation, faced different state and federal regulatory schemes without the crippling drawbacks predicted by some for new entrants. Next, the proposals of most advocates of uniform federal standards contemplate flexibility for states to impose more stringent interconnection and access requirements on incumbent LECs ("ILECs"). To the extent that states and negotiating carriers have discretion to customize interconnection to suit their individual circumstances, uniform standards are impossible. The very structure chosen by Congress -- carrier negotiations and state supervision -- is consistent with marketplace variations, not strict, regulator-enforced conformity.

The RTC also agrees with the Department of Defense (pp. 1-9) that the Commission should be involved in implementing the interconnection and access requirements to the extent necessary to protect the national defense. Collocation, unbundling, access to information and other interconnection arrangements have the potential to undermine network reliability and

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[12] *E.g.*, DOJ at 7-9 and CompTel at 19-21.

security. Some national uniformity may be essential for this purpose. The Commission has responsibilities and authority in this area that predate the 1996 Act.[13]

To the extent that the Commission goes forward with detailed requirements and pricing methodology, the RTC is also troubled by the underlying prejudgment, implicit in some comments, that the purpose of interconnection and access is to assist new competitors. For example, the DOJ comments repeatedly assume that LECs will not obey the law or negotiate in good faith. Several states have also complained in their comments about the *NPRM*'s erroneous assumption that states are not pursuing competition.[14] The Commission should keep in mind, as the *NPRM* seems to recognize (¶ 12), that the national policy commitment is to competition as distinct from competitors. Congress decided to rely on negotiation in the first instance with almost no regulatory requirements for voluntary agreements. It would be totally inappropriate for the Commission to adopt rules meant to handicap in favor of the new entrant, based on the tacit assumption that Congress was wrong to let ILEC's negotiate.

II. SECTIONS 251 AND 252 ARE LIMITED TO INTERCONNECTION AND ACCESS ARRANGEMENTS BETWEEN COMPETING LOCAL EXCHANGE CARRIERS.

A. Congress Specifically Excepted Interexchange Access Requirements from the New Interconnection Regime for Competitors.

Interexchange providers continue to contend that the new interconnection and access requirements replace or provide an alternative to the access charge system prescribed under Section 201 and Part 69 of the Commissions's Rules. The contentions take two main forms:

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[13] Section 1 of the 1934 Act confirms the importance of national defense. 47 U.S.C. § 151.

[14] The Eight Rural States' comments furnish examples of rural states that have warmly embraced local competition only to discover that competitors are generally not interested in rural service.

(a) claims that all forms of interconnection made available in Section 251 may be requested for any telecommunications service [15] and (b) claims that interexchange carriers may avoid the access charge rules by requesting unbundled network elements under Section 251 (c)(3).[16] Both contentions are belied by the plain language of the Act and its legislative history.

As the *NPRM* noted (¶¶ 160-161) and many commenters agree,[17] interconnection pursuant to Section 251(c) (2) is expressly limited to interconnection for "the transmission and routing of telephone and exchange access service." Proponents of reading broader interconnection rights for interexchange carriers into the interconnection provisions have not supported their claims by any evidence from the law or expressions of Congress' intent. Nor have they justified exposing the nation's residential and rural ratepayers to higher rates by interfering with access contributions to overall cost before Section 254 is fully implemented and the Commission has directly confronted the challenge of revising access issues to comport with a competitive environment.[18]

The notion that IXCs may unilaterally terminate the access charge regime by substituting unbundled network elements for the access services provided by ILECs shares the public policy drawbacks of the claimed interconnection rights for interchange services discussed above. In addition, both requesting interconnection to avoid access charges and rules and substituting

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[15] *See, e.g.*, Telecommunications Resellers Association at 47-48; Frontier at 3, 8-9.

[16] *See, e.g.*, DOJ at 45-47; GCI at 11-12; ACTA at 16-17.

[17] *E.g.*, MFS at 65 (stating that Section 251(c)(2) applies only to the provision of exchange and exchange services); USTA at 59-62; Time Warner at 60-61.

[18] *See* RTC at 22-24; USTA at 64-66.

unbundled network elements for exchange access service conflict with the legislation and will of Congress for at least four reasons.

First, Section 251(g) explicitly preserves all current access "regulation[s]," "order[s]," and "polic[ies] of the Commission," including provisions governing the "receipt of compensation," until "explicitly superseded by regulations prescribed by the Commission after such date of enactment [of the 1996 Act]." Thus, Congress plainly intended the Commission to consider the issues raised by modifying access requirements, including the impact on ILEC access charge compensation, <u>before</u> current compensation arrangements are replaced or bypassed. In other words, Congress made it clear that it did not intend the Act to change the access charge regime automatically, as the proponents of negotiated interconnection and unbundled elements would have it.

Second, Section 251(i) of the Act expressly preserves the effectiveness of the Commission's authority under Section 201 of the Act, thereby preserving the legal foundation and validity of the access charge regulations in Part 69 and the associated Commission policies.

Third, the Managers' Statement (p. 123) provides further evidence that Congress intended to preserve the Commission's access charges and authority over interstate access. If access charges to interexchange carriers had been made subject to the provisions of Sections 251 and 252, the Act would perforce have turned most of the authority over interstate access charges over to the states and carrier negotiations. However, in addition to preserving the FCC's existing access requirements, the Act gives the Commission jurisdiction over interconnection requirements previously subject to the AT&T and GTE consent decrees.[19] There is nothing in the law or the

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[19] Section 251(g).

Managers' Statement to suggest that, by preserving and by broadening the scope of the Commission's interstate access authority, Congress actually meant to let interexchange carriers avoid the reach of that authority by invoking Section 251, the very section of the Act that preserves FCC power.

Fourth, the interstate access charge and access compensation structure Congress preserved until "explicitly superseded" by Commission regulations controls IXCs' interconnection to ILECs in all relevant respects The Part 69 access charge rules and related policies include detailed expanded interconnection requirements and exceptions[20] and (b) requirements for "unbundling" and charging for Basic Service Elements and Basic Service Arrangements.[21] The Commission had indicated before enactment of the new law that it planned to reexamine its access charge rules, but it has not done so yet. Hence, all of the Commission's access charge requirements remain in effect. Accordingly, the Commission should reject the claims of AT&T (*see* pp. 31, 72), MCI (pp. 77-83), GCI (p.11) and others that any part of the competitive

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[20] *E.g., Expanded Interconnection with Local Telephone Company Facilities*, CC Docket Nos. 91-141 and 92-222; *Report and Order and Notice of Proposed Rulemaking*, 7 FCC Rcd 7369 (1992); *Second Report and Order and Third Notice of Proposed Rulemaking*, 8 FCC Rcd 7374 (1993); *Third Report and Order*, 9 FCC Rcd 2718 (1994); *Memorandum Opinion and Order*, 9 FCC Rcd 5254 (1994)

[21] *See* Part 69, 47 C.F.R. §§ 69.1 *et seq.*; *Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, CC Docket Nos. 89-79 and 87-313, *Report and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524 (1991); *MTS and WATS Market Structure and Transport Rate Structure and Pricing*; CC Docket Nos. 78-72 (Phase I) and 91-213; *Order and Further Notice of Proposed Rulemaking*, 6 FCC Rcd 5341 (1991); *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992); *First Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 5370 (1993); *Second Memorandum Opinion and Order*, 8 FCC Rcd 6233 (1993); *Transport Rate Structure and Pricing*, CC Docket No. 91-213; *Second Report and Order*, 9 FCC Rcd 615 (1994).

interconnection provisions in Sections 151 and 152 frees them from their existing access charge obligations.

B. Agreements Between Non-Competing Neighboring LECs Are Not Interconnection Agreements Subject To Sections 251 and 252.

Some parties assert[22] that all ILEC agreements, including agreements between non-competing ILECs, must be filed subjected to state approval and made available to any other requesting carrier for any purpose. Some states have accepted this contention and ordered ILECs within their jurisdictions to file the terms of arrangements such as Extended Area Service for state approval.[23] Some commenters urge that renegotiation of existing agreements may be appropriate in light of the new law.[24] Others seek to prevent ILECs from withdrawing terms negotiated before the enactment of the Act and demand the same terms in a competitive situation.[25]

The RTC demonstrated in its opening comments (pp. 17-20) that the interconnection requirements should be limited to competition to provide local exchange and exchange access in the same area, consistent with their purpose: opening remaining markets to competition. USTA also argued persuasively (pp. 6-7) for excluding such arrangements from the reach of any of the competitive interconnection provisions. Proponents' arguments tend to boil down to the notion that "interconnection is interconnection," so if a LEC makes an arrangement with anyone, it can and should also provide the same terms to a competitor or other carrier.[26] However, the RTC

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[22] *E.g.*, NCTA at 13-14 TCG at 50-53

[23] *See* Public Service Commission of Wisconsin, Memorandum to All Local Exchange Carriers, 05-TI-140, May 17, 1996.

[24] NCTA at 13 (seeking a "fresh look" policy.)

[25] For example, the Wisconsin PSC has ordered the filing of all such contracts between LECs in effect at the time of enactment.

[26] *See* TCG at 51-55.

has shown, above, that interexchange interconnections are different. And it demonstrated in its opening comments (pp. 20-21) that applying the Act's interconnection requirements to non-competing LECs would deprive rural LECs of the right to obtain or continue "infrastructure sharing" -- i.e. interconnection arrangements with their neighboring larger ILECs to make up for the limited economies of scale and scope available in their rural service areas.[27]

It is not rational to argue that Congress (a) adopted the infrastructure sharing provision to allow rural LECs and their customers to benefit from agreements with their larger neighboring ILECs, provided they were not used to compete with the furnishing ILEC (§ 259(b)(6)) and free from the obligations of common carriage (§ 259(b)(3)), but, simultaneously, (b) intended to apply the common carrier treatment for competitors under Sections 251 and 252 to such ILEC to ILEC agreements. At this point, rural LECs cannot even seek infrastructure sharing to continue existing agreements because the necessary rules have not been adopted. Allowing other carriers to request identical arrangements for the completely different purpose --declared outside the scope of infrastructure sharing -- of competing in the sharing LEC's service area would eliminate Congress's determination that rural LECs should have the opportunity to share infrastructure with larger LECs under unique terms. Prematurely granting such "interconnection" requests now also effectively repeals the infrastructure sharing law.

To avoid further confusion about the relationship between infrastructure sharing and this section -- before the Commission has even launched the required proceeding to implement infrastructure sharing -- the Commission should promptly issue a ruling to preserve its infrastructure sharing options and jurisdiction. It should rule that arrangements between non-

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[27] Section 259 requires the Commission to adopt rules requiring infrastructure sharing at the request of any "eligible telecommunications carrier" that lacks economies of scale or scope.

competing rural ILECs need not be filed or made available pursuant to Section 251 at least until the rules for infrastructure sharing and state designations of eligible carriers under Section 214 have been implemented and the status of non-competing LECs' agreements has been resolved.[28]

Given the Commission's unquestionable authority and duty to implement infrastructure sharing, it should act quickly to preserve its ability to implement that section as Congress intends. Indeed, the importance many consumers attach to arrangements such as EAS between neighboring LECs jointly providing non-competing services provides an independent reason for rejecting strained interpretations proposed in this proceeding. It would be unfortunate if confusing these adjacent LEC arrangements with interconnection arrangements between competitors forced the termination of such arrangements, to the detriment of customers.

III. IF THE COMMISSION ADOPTS MANDATORY PRICING RULES, IT MUST TAKE INTO ACCOUNT THE INHERENTLY UNIQUE ECONOMIES OF RURAL AREAS.

A. The Act Intends that State Commissions Determine Prices.

As explained in Section , above, Congress intended the State commissions to develop pricing rules. As Congress intended,[29] the states are cognizant of the unique economies of their respective regions. As Ameritech comments, "State commissions not only have the experience necessary to balance competing interests in opening local exchange services to competition, but have an important role in ensuring resale is implemented consistent with other public interest policies. States are also in the best position to make such determinations, especially where

[28] The RTC recognizes that infrastructure sharing agreements will have to be filed pursuant to Section 259 (b)(7).

[29] Section 252(c)(2) of the Act mandates that State commissions shall "establish any rates for interconnection, services, or network elements. . . "

important issues such as state-specific universal service policies are concerned."[30] Undoubtedly, New Mexico is different than New Jersey and policy should reflect that difference.

B. If the Commission Sets Pricing Rules, It Must Recognize Urban-Rural Differences and Not Sacrifice LEC Financial Viability for the Benefit of Competitors.

One of the most troubling features of the comments is the call for strict national pricing standards regardless of geography or population density. IXCs and new competitive LECs ("CLECs") naturally and understandably promote rules intended to give them the best possible opportunity to capture the lucrative high-density, high-profit urban and suburban subscribers. However, these new entrants to the local exchange market are proposing pricing rules that are based on the erroneous assumption that all LECs are exactly the same. Obviously this is not the case and rigid rules, based on the properties of large urban LECs, cannot blindly be applied to small and rural LECs.[31]

C. The Wholesale Pricing Rules of Section 252 Should Not be Used to Destroy the LEC Industry.

Not only are the IXCs and CLECs proposing pricing rates using an urban LEC model, but their proposals and radical discounts, if implemented, could be tantamount to relegating the current LEC industry to the role of a wholesaler whose sole purpose is to construct and maintain the new resold local network. AT&T sums up this mind-set when it boldly suggests that "regulatory rules that prudently minimize the risk exposure and capital requirements associated with the development of local exchange competition will serve the public interest."[32] This is not

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[30] Ameritech at 52.

[31] The record is clear (both in the former CC Docket No. 80-286 and the current CC Docket No. 96-45) regarding the overwhelming differences between rural LEC regions and large LEC regions in matters such as population density, terrain, traffic volume, weather, etc.

[32] AT&T at 75.

competition -- genuine competition involves risk and capital expenditure. Apparently, AT&T would like the local network served up in pieces at going-out-of-business, less-than-economic-cost prices. As US West points out in its comments, "if the Commission mandates incumbents to set the wholesale price of local exchange service below its full economic cost, as AT&T proposes, it will run the very real risk of creating an environment in which AT&T will dominate local exchange markets."[33] Replacing a dominant provider with a megalith such as AT&T does not bode well for either competition or the consumer. AT&T's radical proposals should be rejected by the Commission as economically unreasonable.[34]

Joining in the chorus of AT&T and the other IXCs are numerous prospective CLECs with varying wholesale discount proposals ranging from 25 percent all the way to 80 percent.[35] Wholesale rates such as these will lead to substantial economic distortions. For example, GTE maintains that "[i]f resellers may purchase telecommunications services at wholesale rates that are below actual costs, they will tend to over consume those services and distort the market."[36] Additionally, CLECs have seized the Commission's "avoided cost" proposal and have run with it as another opportunity to reduce their entry costs and risks. CLECs suggest adding USOA accounts that deal with general administrative, support, and maintenance categories to the list of avoided costs.[37] These proposed avoided costs are an integral part of running a network. While

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[33] US West at 17.

[34] US West points out that AT&T recently stated that "prices for telecommunications services must exceed marginal costs (and make a contribution to fixed costs) for carriers to remain financially viable." US West at 21. *See also* Joint Brief of Petitioner AT&T Corp. *et. al.*, *California v. FCC*, No. 94-70197, Ninth Cir., filed August 17, 1995.

[35] ACTA at 28-29; CompTel at 98; MFS at 74; and TRA at 23.

[36] GTE at 53.

[37] CompTel at 97; TRA at 25.

the RTC is certainly not arguing that there is no such thing as avoided costs, the RTC suggests that the Commission view the CLEC wish-list of avoided costs with skepticism. Also, the Commission must keep in mind that, given the relatively small staffs of rural LECs, their administrative costs are proportionately higher than those of urban LECs and therefore less "avoidable."[38]

D. Proxies Are Not Appropriate for Rate Setting.

There is minimal, if any, support for the use of proxies for the setting of rates. Not even the sponsors of the BCM suggest its use. As for proxies, Frontier says it best: "Proxy-based outer limits -- maximum, minimum, or both -- will result in cost-based rates only by coincidence."[39] Setting rates by the vagaries of proxy coincidence is not in the public interest.

E. Bill and Keep Is Not An Appropriate Mandatory Pricing Standard.

Likewise, mandating bill and keep for the transport and termination of calls is contrary to the public interest and even its supporters present serious caveats. The Department of Justice warns that "[t]he most significant unresolved issue concerning the appropriateness of a bill and keep standard is whether, as a long term standard, it would adequately compensate carriers for incremental costs incurred at peak traffic times. If so, such a standard in the long run could lead to underinvestment in telecommunications plant and overconsumption of the service."[40] MCI purports that bill and keep should be avoided if "traffic is persistently out of balance."[41] For LEC-

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[38] This is but another example of the inherent differences between rural and urban LECs. Adoption of rules, constructed on an urban LEC model, could have a devastating effect on rural LECs.

[39] Frontier at 22.

[40] DOJ at 35.

[41] MCI at 48.

CMRS traffic relationships it is worthwhile to point out that CTIA is aware of "different traffic flows and termination costs," as well as "an imbalance in traffic volumes between LEC to cellular and cellular to LEC traffic."[42]

Meanwhile, those commenters opposed to bill and keep present strong legal arguments. GTE relates that "FCC adoption of a bill and keep mandate would also violate the Fifth Amendment by requiring interconnection -- physical occupation and use -- of the LEC's network without just compensation."[43] Ameritech adds that "Section 252(d)(2) in no way authorizes either states or the Commission to mandate an arrangement, such as bill and keep, in contravention of the right of each carrier to recover its costs. Moreover, bill and keep may create significant economic distortions as well."[44] Bill and keep is a clear violation of the Congressional intent to allow carriers to recover their costs and should not be mandated even as an interim solution.

The current trend in telecommunications is to drive rates toward cost with certain public interest considerations in mind. The 1996 Act is the manifestation of this trend with its emphasis on competition <u>and</u> universal service. The RTC requests the Commission to satisfy its responsibility to consider the fragile and unique economics of rural areas when it examines resale pricing rates. Unquestionably, standards for low density rural LEC interconnection ought to be different than those for high density urban LECs. If the Commission in its zeal to pursue local exchange competition sets policy that errs on the side CLECs or IXCs seeking the highest volume, most lucrative customers, then the subscribers in remote and less profitable rural areas

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[42] CTIA at 7.

[43] GTE at 57.

[44] Ameritech at 78-79.

will suffer.

MFS contends that "both competitors and end users will benefit"[45] from their pricing proposals. Unfortunately, only competitors will benefit from their and the IXCs' extreme, below-cost pricing suggestions. The record has demonstrated that below-cost pricing schemes that do not include full economic costs will send the wrong economic signals and distort the market. MCI audaciously suggests that these full economic costs "be recovered elsewhere."[46] Such opportunities do not exist in rural areas where the loss of a handful of profitable, high volume customers to a new entrant with no universal service obligations could lead to the eventual deterioration of the network. The RTC urges the Commission to avoid imprudent below-cost rates that will either lead to CLEC cream skimming or IXC domination in the delicate economies of rural areas.

IV. STANDARDS TO IMPLEMENT 251(f) ARE NOT REQUIRED; IF GUIDELINES ARE ADOPTED, THEY MUST BE CONSISTENT WITH THE ACT.

A. FCC Standards are not Required or Contemplated by Section 251(f).

In its initial comments, the RTC offered ample evidence supporting the FCC's tentative conclusion that the states alone have the authority to make determinations for terminating the rural carrier exemption and granting suspensions and modifications under Section 251(f) of the 1996 Act. On the question of whether the Commission should establish standards to assist the states, numerous commenters[47] recognized that states -- and not the FCC -- are best suited to

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[45] MFS at 61.

[46] MCI at 74.

[47] *See, e.g.*, BellSouth at 76; Pacific Telesis Group at 99; GTE at 79-80; Western Alliance at 7; GVNW at 42; Alltel at 16. Citizens Utilities Company at 33-34; Illinois Independent Telephone Association at 7.