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

MAY 30 1996

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

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REPLY COMMENTS OF THE WESTERN ALLIANCE

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SUMMARY

Several commenters in this proceeding propose rules that would limit discretion expressly granted to the States, in the Telecommunications Act of 1996, to determine interconnection charges and protect rural ratepayers while opening local markets to competition. Notably, some commenters urge the Commission to endorse bill-and-keep and other symmetrical compensation arrangements, without regard to the costs actually incurred by incumbent carriers to interconnect with new entrants. Similarly, some comments propose restrictions, not authorized in the 1996 Act, on the statutory authority of State commissions to limit resale of residential services. And finally, at least one commenter suggests that the Commission should limit the discretion of the States to administer the rural exemption, and to grant suspensions and modifications of the interconnection requirements for local exchange carriers serving fewer than 2 percent of the Nation's access lines.

Each of these proposals threatens to frustrate the intent of Congress, undermine the ability of the States to exercise authority plainly granted to them by the Act, and harm ratepayer interests that the Act requires the Commission to protect. Accordingly, these suggestions should be rejected.

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REPLY COMMENTS OF THE WESTERN ALLIANCE

Some of the comments filed in this proceeding[1] call upon the Commission to enact rules that would undermine the congressional intent to preserve the affordability of rural telephone service.[2] Notably, some commenters advocate mutual compensation arrangements that would not permit rural carriers to recover the costs they incur in providing interconnection. Other commenters would restrict the statutory authority of the States to limit resale of residential service; and at least one commenter seeks to limit the ability of States to implement the exemption, suspension and modification provisions available to rural carriers. As explained more fully below, the plain language of the Act requires that these suggestions be rejected.

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking (the "NPRM"), FCC No. 96-182 (Apr. 19, 1996).

[2] The local exchange carriers represented by the Western Alliance consist, almost exclusively, of rural and insular telephone companies serving remote areas of the Western United States and the Pacific island territories. The typical Western Alliance member is a high-cost carrier receiving supports from the universal service and DEM weighting mechanisms, and relying on loans from the Rural Utilities Service (RUS) as its principal source of capital to upgrade and expand its network.

I. Mutual Compensation Arrangements Should Reflect Actual Costs.

The 1996 Act requires that mutual compensation for transport and termination be based on "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier . . ."[3] Contrary to the views of some commenters, this standard will not support a rule requiring all States to adopt bill-and-keep or other symmetrical compensation arrangements, or requiring States to base mutual compensation on proxy cost models.

Bill-and-keep and other symmetrical compensation arrangements between two carriers assume that both networks incur the same costs to provide terminating access.[4] Some proponents of symmetrical compensation concede that this assumption may not square with the facts, and that the costs incurred by incumbents may be greater than those of new entrants;[5] but they nonetheless contend that symmetrical interconnection rates, based on the incremental cost of terminating access using the lowest-cost technology, will impose a useful discipline, by forcing incumbents to adopt efficient technology and bring their costs in line with those of the new entrants.[6]

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[3] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 ("1996 Act") at Sec. 252(d)(2)(A)(i).

[4] Bill-and-keep -- a variant of symmetrical compensation -- relies on the additional assumption that traffic volumes in both directions are equal.

[5] *See, e.g.*, Comments of Teleport Communications Group, Inc. at 73.

[6] *See, e.g.*, Comments of MFS Communications Company, Inc. at 85-86; Comments of MCI Telecommunications Corporation at 50.

In the real world, however, the higher costs incurred by local exchange carriers -- and especially rural carriers -- are not the result of inferior technology and cannot be eliminated by replacing old facilities with new.[7] Those costs are the result of investment made to serve high-cost, low-volume customers and low-density areas that new entrants can avoid. Under these circumstances, symmetrical compensation can only be justified by a pricing methodology that ignores all shared costs -- an economically inefficient approach that this Commission has not imposed in any other context.[8] For the rural carriers represented by the Western Alliance, in particular, ignoring shared costs will encourage uneconomic entry, force ratepayers to bear a disproportionate share of common costs, and discourage investment in network expansion and modernization.

Some commenters also propose that mutual compensation should be based on proxy mechanisms, such as the Hatfield study that builds on the Benchmark Cost Model (BCM) developed for calculation of universal service supports.[9] The BCM, however, was not developed as a tool for interconnection pricing, and when applied to rural and high-cost companies, is

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[7] In fact, the technology used by rural telephone companies is likely to be every bit as advanced as that employed by new entrants.

[8] *See e.g., Expanded Interconnection With Local Telephone Company Facilities,* 7 FCC Rcd 7369, 7429 (1992).

[9] *See, e.g.*, Comments of AT&T Corp. at 51-52; Comments of MCI Telecommunications Corporation at 70-71.

inadequate even for its intended purpose.[10] There is no basis, therefore, for the application of the BCM -- or any other proxy model proposed so far -- as a means of placing an upper limit on interconnection charges of rural telephone companies.

To the extent the Commission develops pricing rules to govern mutual compensation for interconnection of competing networks, it must recognize the inadequacy of bill-and-keep and other symmetrical compensation approaches, and must enact rules that permit each carrier to charge for interconnection at a level that recovers the actual costs -- not the imaginary, proxy costs -- that it incurs. This requires recovery, not only of incremental costs, but also of a uniform allocation of shared costs and, where appropriate, an allowance for lost contribution.[11]

II. The Commission Should Not Limit The States' Statutory Authority Over Resale Of Residential Service.

Some commenters propose limitations on the ability of a State to regulate under Section 251(c)(4)(B), which permits States to control the resale of LEC services to classes of customers to

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[10] *See, e.g.*, Comments of NYNEX in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC No. 96-93 (Mar. 8, 1996)(hereinafter "CC Docket 96-45"), conceding that its Benchmark Cost Model "should only be used to calculate support amounts for price cap (*i.e.*, large) LECs [because] such a model may not accurately portray the costs of a smaller carrier that serves only a limited or smaller area, and thus could cause financial harm to small carriers." Comments of NYNEX at 10. *See also* MCI Comments in CC Docket 96-45 at 11; Comments of US West, Inc. in CC Docket 96-45 at 9; Comments of US West Communications, Inc. in *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking and Notice of Inquiry, 10 FCC Rcd 12309, 12314 (1995), at 26.

[11] *See* Comments of the Western Alliance at 5. The Western Alliance also supports the inclusion, in interconnection charges, of opportunity costs incurred by incumbent carriers when they sell inputs to competing carriers. *See, e.g.*, Comments of the Rural Telephone Coalition at 28-30.

which those services are not available at retail. Notably, it is urged that State regulations under this provision must be limited to the sale of "Lifeline" or other customer-specific discounted services, and that the States' use of the provision for any other purpose should be forbidden -- either immediately, or after a brief transition period.[12] These proposals should be rejected.[13]

First, there is no reason for the Commission to limit the authority of the States to determine, consistent with the Act, the proper application of Section 251(c)(4)(B). At present, intrastate rates charged to business customers commonly support lower rates for residential service, and a number of State commissions restrict the resale of residential service in order to preserve those supports. The transition from such implicit supports to a pure regime of explicit supports for residential service, both at the State and federal level, will not occur overnight. The 1996 Act does not require the immediate elimination of all implicit subsidies or usurp the authority of the States to manage the transition in a manner that protects intrastate ratepayers. Accordingly, the States should remain free to regulate the resale of residential services in any manner that is consistent with the 1996 Act. In particular, the States should be free to limit resale of residential services to business customers, or others who may be a continuing source of support for residential service, until such time as

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[12] *See, e.g.*, Comments of MFS Communications Company, Inc. at 71-72; Comments of AT&T Corp. at 79-80; Comments of MCI Telecommunications Corporation at 90-91.

[13] The Western Alliance offers these observations without prejudice to its view, stated in its comments in this proceeding, that the duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail . . ." applies only to carriers subject to 251(c) of the Act, and therefore does not apply to carriers that qualify for the rural exemption. Comments of the Western Alliance at 2-3.

competition and the refinement of explicit support programs have made those limitations unnecessary.[14]

Similarly, the Act does not support the imposition of an artificial deadline, after which the States no longer will be permitted to limit resale of residential services for any purpose except the preservation of "Lifeline" and similar programs.[15] There can be no assurance that explicit univeral service subsidies will be in place, and fully adequate, to support residential rates by any near-term date the Commission might adopt. The imposition of a deadline, therefore, is a needless imposition on the discretion of the States and a threat to the affordability of residential service, especially in rural and high-cost areas.[16]

III. The Commission Should Preserve The Authority Of States To Implement Exemptions For Rural Carriers.

The National Cable Television Association ("NCTA") contends that the exemption and waiver authority prescribed in Section 251(f) is inconsistent with the procompetitive purpose of the 1996 Act, and that the discretion of the States to apply these provisions must be confined by

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[14] In fact, even commenters who seek to limit the application of Section 251(c)(4)(B) are not unanimous in viewing its application as limited to Lifeline and other customer-specific subsidies. MCI, for example, states that "the intent of the exception language is to restrict resale of residential local service to business customers." Comments of MCI Telecommunications Corp. at 90.

[15] Comments of MFS Communications Company, Inc. at 71-72.

[16] The Western Alliance also supports the proposal, made by the Rural Telephone Coalition, that any rules concerning the calculation of "avoided costs" for purposes of the setting of wholesale rates must recognize the differences in the relative cost structures of larger and smaller LECs. Comments of the Rural Telephone Coalition at 20-21.

Commission rules. These claims are without merit: the provisions of Section 251(f), like the Act's universal service provisions,[17] are specific congressional directives that cannot be trumped by appeals to the Act's supposed purpose. Nor can the Commission offer "guidance" to the States that effectively withdraws the authority the Congress plainly gave them.

So, for example, NCTA argues that suspensions and modifications of Section 251(b) may not apply to resale, reciprocal compensation and the duty to negotiate, since those provisions do not relate to particular "telephone exchange service facilities . . ."[18] This reading of the Act, if adopted, would place some of the most important provisions of Sections 251(b) and (c) beyond the reach of the suspension and modification provisions of Section 251(f)(2). There is no question that if the Congress intended these provisions to be read so restrictively, it knew how to say so.[19]

Similarly, NCTA argues that no petition under Section 251(f)(2) may be granted unless the State commission is satisfied that *all three* criteria set out in the section -- *i.e.,* signficant adverse economic impact on users, undue economic burden *or* technical infeasibility -- are met. Again, if the Congress had intended to require that all three requirements be met before a petition could be granted, it would not have listed those requirements as alternatives, by joining them with the

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[17] 1996 Act, *supra,* Sec. 254.

[18] *Id.*

[19] In fact, when it wanted to limit the reach of the similar, and immediately preceding, rural exemption provisions, the Congress set up a separate subsection and plainly labeled it "Limitation on Exemption." 1996 Act, *supra,* Sec. 251(f)(1)(C).

connector *or*.[20] To read this language as NCTA suggests would make Section 251(f)(2) so restrictive as to be useless.

Despite NCTA's suggestion to the contrary, the Act itself provides ample guidance to the States in implementing Sections 251(f)(1) and 251(f)(2). The Commission should adopt its tentative conclusion[21] and leave the details of the Section 251(f) exemptions and waivers to the States.

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[20] Section 251(f)(2) provides that a state commission may grant a petition for waiver or modification to avoid: (1) a significant adverse economic impact on users of telecommunications services generally; (2) imposition of an unduly economically burdensome requirement; or (3) imposition of a technically infeasible requirement. 1996 Act at Sec. 251(f)(2).

[21] NPRM at ¶ 261.

CONCLUSION

The 1996 Act entrusts most implementation decisions to the States. Where knowledge of local conditions is at a premium -- as in protection of rural, residential ratepayers -- the ability of State commissions to exercise the discretion granted to them in the Act is especially critical. The Commission should not adopt rules that undermine that discretion and jeopardize the goals of Congress.

Respectfully submitted,

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May 30, 1996

CERTIFICATE OF SERVICE

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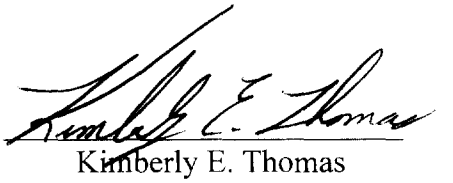

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