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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72
	)	

PETITION FOR RECONSIDERATION OF THE RURAL TELEPHONE COMPANIES

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July 11, 1997

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SUMMARY

The Rural Telephone Companies submit the attached Petition for Reconsideration to request the Commission to reconsider and vacate its mandate disallowing the collection of access charges when an interexchange carrier or other carrier purchases access services on an unbundled basis. This Commission action violates the Fifth Amendment of the United States Constitution by requiring the Rural Telephone Companies to provide access service to interexchange carriers on an unbundled basis without providing an opportunity to recover the costs of doing so. The Commission's "forward-looking" only policy concerning the Rural Telephone Companies' recovery of investment causes the Rural Telephone Companies' rate of return for interstate access service to fall below the 11.25 percent interstate rate of return deemed by the Commission to be just and reasonable, and is thus "confiscatory" under judicial precedent. The Commission's action also violates the Rural Telephone Companies' Fifth Amendment rights by requiring physical collocation of network facilities, or physical occupation of property, without just compensation.

The Commission's Report and Order announcing its access charge revisions also violates several provisions of the Communications Act of 1934, as amended (the "Act"). First, it requires incumbent local exchange carriers to discriminatorily charge different prices for like services, violating Section 202(a) of the Act. The Report and Order also discourages investment in new technologies, undermines universal service and endangers affordable local rates, violating Sections 7 and 254(b)(2) of the Act, by not allowing incumbent local exchange carriers to fully recover their booked investment in providing interstate access services. The Report and Order's deviation from interstate access tariffs filed with the Commission, and its own rate of return

regulations, violates Section 203(c) of the Act and the Filed Rate Doctrine.

The Commission has offered no valid reason why interexchange carriers should suddenly be exempt from paying rates that earn the Rural Telephone Companies the authorized interstate rate of return in their provision of interstate access services. A just and reasonable return on booked investment has been a cornerstone of the Commission's average schedule formulas and rate of return regulation for many years. It is also consistent with the Commission's long standing policy of requiring the costs to be recovered from the cost causer, which for unbundled access service is the interexchange carrier.

The Commission's deviation from this precedent, without "satisfactory explanation for its action," is arbitrary and capricious agency action under the Administrative Procedure Act. Finally, the Commission violated the Regulatory Flexibility Act by not considering significant alternatives that reduce the impact on small businesses, such as treating unbundled access services provided by rural telephone companies differently than price-cap regulated interstate access services.

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PETITION FOR RECONSIDERATION OF
THE RURAL TELEPHONE COMPANIES

The Rural Telephone Companies, by their attorneys and pursuant to 47 C.F.R.§ 1.429, respectfully submit this Petition for Reconsideration of the Commission's First Report and Order[1] in the above-captioned proceedings (hereinafter referred to as the "Report and Order").[2] For the reasons set forth herein, the Rural Telephone Companies respectfully request that the Commission reconsider and vacate its mandate disallowing the collection of access charges when an interexchange carrier ("IXC") or other carrier purchases access services on an unbundled basis.

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1 62 Fed. Reg. 31,868 (June 11, 1997).

2 The Rural Telephone Companies are identified in Exhibit One attached hereto.

I. INTRODUCTION.

The Rural Telephone Companies are small incumbent, local exchange carriers ("ILECs") serving predominantly rural areas, including small villages and towns, sparsely populated farming communities and/or isolated wilderness aresas with difficult terrain. On May 16, 1997, the Commission released the Report and Order, which precluded all ILECs, including rural ILECs, from charging tariffed access charges for unbundled network elements that are used to provide access service.[3] The Commission identified the general approach of the Report and Order as moving "overall access rate levels toward forward-looking economic cost."[4]

Section 251(f)(1)(A) of the Communications Act of 1934, as amended (the "Act") exempts rural telephone companies from the obligation to provide unbundled network elements until they receive a bona fide request and the state commission decides to terminate that exemption.[5] The Report and Order creates a strong incentive for IXCs to obtain access service by purchasing network elements in an unbundled manner, then bundling those facilities to obtain access service; otherwise, IXCs stand to pay the tariffed access charges for using the same facilities purchased on a bundled basis.[6] Thus, IXCs seeking to avoid access charges are likely to request unbundled access service from the Rural Telephone Companies at rates that recover only forward looking costs, but no booked investment, and file a copy of their bona fide requests with the state commissions pursuant to Section 251(f)(1)(B) of the Act in order to terminate the rural

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3 See Report and Order at ¶ 337.
4 Id. (footnote omitted).
5 See 47 U.S.C. § 251(f)(1)(A).
6 See Report and Order at ¶ 337.

telephone company exemption.[7] Thus, the Rural Telephone Companies are parties "whose interests are adversely affected," facing "economic injury,"[8] with standing to file this Petition.[9]

II. THE COMMISSION'S REPORT AND ORDER VIOLATES THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION BY TAKING THE RURAL TELEPHONE COMPANIES' PROPERTY WITHOUT JUST COMPENSATION.

The Commission's Report and Order requires all ILECs to make available unbundled network elements used to provide access service to IXCs while prohibiting the ILECs from billing access charges that are set to earn them the FCC authorized reasonable rate of return on their investment.[10] This federal regulation causes a taking under the Fifth Amendment of the United States Constitution: "private property [shall not] be taken for public use, without just compensation."[11] The Report and Order takes the property of the Rural Telephone Companies, as regulated telecommunications carriers, by requiring them to provide access service to IXCs on an unbundled basis without providing them with an opportunity to recover the costs of doing so. Average schedule companies will suffer an impact similar to that of cost companies as Section 69.606 of the Commission's rules requires the National Exchange Carrier Association, Inc. ("NECA") to revise the average schedule formulas to produce disbursements that simulate the disbursements received from cost companies.

The Supreme Court has recognized that public utilities owned and operated by private

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7 See 47 U.S.C. § 251(f)(1).

8 See Louisiana Television Broadcasting Corp., 16 RR 2d 413 (1969).

9 47 U.S.C. § 405.

10 See Report and Order at ¶337.

11 U.S. Const. amend. V. See Duquesne Light Co. v. Barasch, 488 U.S. 299, 307 (1989).

investors, such as the Rural Telephone Companies, may assert their rights under the Takings Clause of the Fifth Amendment.[12] In applying the Takings Clause to rate setting for public utilities, the Court has stated that "[t]he guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory."[13] The Supreme Court has held that the determination of whether a rate is confiscatory depends on whether that rate is just and reasonable.[14]

In Hope Natural Gas, the Court set forth the governing legal standard for determining whether a rate is constitutional:

> Under the statutory standard of "just and reasonable" it is the result reached not the method employed that is controlling. It is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.[15]

The Court went on to explain that, in determining whether a rate is reasonable, the regulatory body must balance the interests of both the investor and consumer.[16] "From the investor or company point of view, it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business . . . . [T]he return on the equity

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12 Duquesne, 488 U.S. at 307.

13 Duquesne, 488 U.S. at 307 (citing Covington & Lexington Turnpike Road Co. v. Sanford, 164 U.S. 578, 597 (1896).

14 Hope Natural Gas, 320 U.S. 591, 602-603; see also Duquesne; In re Permian Basin Area Rate Cases, 390 U.S. 747 (1968); Federal Power Commission v. Memphis Light, Gas & Water Division, 411 U.S. 458 (1973); Jersey Central Power & Light v. FERC, 810 F.2d 1168 (D.C. Cir. 1987).

15 Hope Natural Gas, 320 U.S. at 602.

16 Id.

owner should be commensurate with returns on investments in other enterprises having corresponding risks."[17]

As demonstrated in Exhibit Two,[18] compliance with the Report and Order causes the Rural Telephone Companies' rate of return for interstate access service to fall below the 11.25 percent interstate rate of return authorized by the Commission and deemed by the Commission to be just and reasonable.[19] Annual interstate revenues generated from the interstate access services purchased as unbundled network elements when compared to the annual revenues that the Rural Telephone Companies currently earn from interstate access charges, exhibits a precipitous drop in revenues for the Rural Telephone Companies that is clearly confiscatory.[20] This taking results from the Commission's "forward-looking" only policy for the recovery of ILEC investment, which does not permit recovery of past investment and capital outlays.

Exhibit Two demonstrates that the interstate revenues that would be earned from rates for unbundled network elements are less than the current interstate operating expenses of rural cost companies.[21] This results in a negative interstate rate of return on investment which is clearly confiscatory in violation of the Fifth Amendment. The small cost companies identified in Exhibit Two will suffer negative returns on their interstate investment ranging from 21.20% to 140.50% as a consequence of the Report and Order.

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17 Id. at 603.

18 See the financial impact analysis attached hereto as Exhibit Two.

19 See Authorized Rates of Return for Interstate Services (Represcription of LEC Rate of Return), 70 RR 2d 26 (1991).

20 See Exhibit Two.

21 Use of these forward-looking cost estimates is for demonstration purposes only and does not constitute an endorsement of this method of calculating rates for unbundled network elements provided by the Rural Telephone Companies.

The financial impact of the Report and Order on average schedule companies is just as devastating as it is for rural cost companies. If average schedule companies are limited to recovering forward-looking costs for unbundled network elements, Exhibit Two demonstrates that a cross-section of this nation's rural telephone companies, operating in states covering over half of the country, will endure a reduction of between 53% and 92.94% in their interstate settlements and a reduction of as much as 44% in their total company revenues. Therefore, while the average schedule formulas are designed to allow an average schedule company to earn a 11.25% rate of return for interstate access service, the Report and Order restricts average schedule companies to earning an interstate rate of return that is far less than that authorized by the average schedule formulas prescribed by the Commission. Moreover, as shown in Exhibit Two, the Report and Order is also likely to cause a negative total rate of return on investment for average schedule companies.

The Commission is barred from considering ILEC revenues derived from services not under its jurisdiction,[22] and thus it cannot expect state commissions to approve ILEC rate increases to compensate for their lost revenues. Therefore, to assess whether the Commission's policy of including only forward-looking costs for access charges is confiscatory, the Commission must only consider revenues from the ILECs' interstate services. The Commission cannot assume that state governments will allow increases in rates within their jurisdiction to make up for the reduction in revenues from interstate access charges. In fact, many intrastate

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[22] See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, ¶737 (1996), stayed in part pending judicial review sub nom. Iowa Util. Bd. v. FCC, 109 F.3d 418 (8th Cir. 1996) (citing Smith v. Ill. Bell, 282 U.S. 133 (1930)).

access charges will decline in lock-step with interstate access charge reductions as interconnection agreements are likely to require the same rates for unbundled network elements whether used to provide intrastate or interstate access services.

The Rural Telephone Companies expect the revenue reductions from local service and intrastate access service to be similar to the reductions in revenues from interstate access service if they are limited to recovering only forward-looking costs when an IXC purchases unbundled network elements. The Commission must vacate its Report and Order or provide a cost recovery mechanism that gives the Rural Telephone Companies a reasonable opportunity to recover all costs incurred in providing interstate access service, including at least an interstate rate of return of 11.25%. Otherwise, the Commission's decision in the Report and Order effects a Fifth Amendment taking.

The Report and Order mandates access to unbundled network elements by competitive local exchange carriers ("CLECs") and also requires physical collocation of those competitors' network facilities, which is, in effect, physical occupation of property without just compensation. As demonstrated in Exhibit Two, the rates for unbundled network elements do not provide just compensation. This, too, is a violation of the Fifth Amendment. Most would agree that forcing one equipment manufacturer to allow its factory and workers to be used by a competing manufacturer without compensation that recovers a reasonable return on the investment in those production facilities would be unconstitutional. Requiring the Rural Telephone Companies to allow this physical invasion by potential competitors also constitutes a taking without just

compensation in violation of the Fifth Amendment.[23]

III. THE COMMISSION'S REPORT AND ORDER VIOLATES THE ACT.

A. THE COMMISSION'S REPORT AND ORDER DIRECTS THE RURAL TELEPHONE COMPANIES TO DISCRIMINATE IN VIOLATION OF SECTION 202(a) OF THE ACT.

The Commission's Report and Order violates several provisions of the Act. The Report and Order requires incumbent local exchange carriers to discriminatorily charge different prices for like services in violation of Section 202(a) of the Act. Furthermore, the Report and Order discourages investment in new technologies, undermines universal service and endangers affordable local rates,[24] in violation of Sections 7 and 254(b)(2) of the Act, by not allowing ILECs to fully recover their booked investment in providing interstate access services. The Report and Order's deviation from interstate access tariffs filed with the Commission, and its own rate of return regulations, violates Section 203(c) of the Act and the Filed Rate Doctrine.

The Report and Order prohibits ILECs from billing access charges for unbundled network elements, yet it requires ILECs to charge access tariff rates for use of the same facilities provided on a bundled basis.[25] Under this Commission scheme, a carrier could order all of the ILEC's network elements on an unbundled basis without paying interstate access charges. Meanwhile, the same ILEC must charge access tariff rates to another carrier that orders the same or substantially the same network elements on a bundled basis. Thus, by adhering to the

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[23] See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

[24] The affordability of local rates will be especially threatened in states that practice residual ratemaking as all interstate investment and expenses that are not recovered through interstate access charges will need to be recovered through either intrastate access service or local service rate increases.

[25] See Report and Order at ¶337.

Commission's Report and Order, the ILEC would charge two carriers receiving the same service differently. Such ILEC action would blatantly violate Section 202(a) of the Act, which states:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.[26]

To determine if an ILEC has violated Section 202(a), the Commission must undertake a three-step inquiry. First, it must determine whether the services are "like"; second, if the services are "like," whether there is a price difference between them; and third, if there is a price difference for "like" services, whether that difference is reasonable.[27]

A service is "like" another if it is functionally equivalent, which "focuses on whether the services in question are different in any material functional aspect."[28] The Commission must look to the nature of the services offered and determine if a user perceives the service "as the same with cost considerations being the sole determining criterion."[29] Here, unbundled loops and loops used to provide access service for calls originating from a distant exchange are functionally equivalent to interstate access service purchased on a bundled basis. As recognized by the Commission in its Notices of Proposed Rulemaking in this proceeding: "Whether traffic originates locally or from a

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26 47 U.S.C. § 202(a).

27 See Comptel v. FCC, 998 F.2d 1058 (D.C. Cir. 1993).

28 Ad Hoc Telecommunications User Comm. v. FCC, 680 F.2d 790, 795 (D.C. Cir. 1982).

29 MCI v. FCC, 917 F.2d 30, 39 (D.C. Cir. 1990).

distant exchange, transport and termination of traffic by a particular LEC involves the same network functions."[30] By its Report and Order, the Commission is mandating discriminatory pricing violative of Section 202(a) of the Act.

B. THE COMMISSION'S REPORT AND ORDER VIOLATES SECTIONS 7 AND 254(b)(2) OF THE ACT.

The federal government's policy is "to encourage the provision of new technologies and services to the public."[31] Section 254(b)(2) of the Act provides that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation."[32] The Commission, under the auspices of the Act's provisions, has consistently been sensitive to the costs imposed on service providers in encouraging investment in new service offerings.

This "cost-conscious" Commission approach is well-documented. The Commission only requires equal access conversion after an ILEC receives a bona fide request and has declined to mandate billed party preference due to the substantial investment that it would require. The Commission has stated that it will adopt mandatory technical standards for the provision of services only where it can be shown that the benefits of mandatory standards outweigh the costs and delay involved.[33] The Commission allowed AT&T to depart from geographic rate averaging

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30 Access Charge Reform, Notices of Proposed Rulemaking, Third Report and Order and Notice of Inquiry, FCC 96-488, ¶ 54 (released December 24, 1996).

31 47 U.S.C. § 157.

32 47 U.S.C. § 254(b)(2).

33 See Reexamination of Technical Regulations, 57 RR 2d 391 (1984).

for certain offerings in its "high-cost" areas.[34] Even the Joint Board recommended that Universal Service Fund support for rural telephone companies initially be based on embedded costs.[35]

In the Report and Order, the Commission inexplicably departs from national policy set forth in the Act, and its own decisions, of encouraging investment in deployment of new services and technologies. By ignoring the fully distributed costs of ILECs' services, and the ILECs' investment in providing those services,[36] the Commission's Report and Order discourages existing and new market entrants from committing the resources needed to provide innovative services. Not allowing ILECs to charge access tariff rates for unbundled network elements used to provide access service, and not permitting ILECs to fully recover the costs of their booked investment, will only serve to depress investment in providing telecommunications services to the public. Thus, the Report and Order violates Sections 7 and 254(b)(2) of the Act and decades of Commission decisions that consider investment costs in the promotion of new services.

C. THE COMMISSION'S REPORT AND ORDER VIOLATES SECTION 203(c) OF THE ACT AND THE FILED RATE DOCTRINE.

The Commission's Report and Order violates Section 203(c) of the Act, and the Filed Rate Doctrine, by prohibiting ILECs such as the Rural Telephone Companies from charging the rates in their interstate access tariffs when an interexchange carrier purchases unbundled network elements for access service. Section 203(c) of the Act states:

> No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such [interstate or foreign] communication unless

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34 See Geographic Rate Averaging and Rate Integration, 3 CR 1267 (1996).

35 See Universal Service Recommendations, 5 CR 1 (Jt. Bd., 1996).

36 Report and Order at ¶ 337.

> schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation, for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities, in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.[37]

However, the Report and Order's directive requires the Rural Telephone Companies to provide unbundled access service at rates that recover only forwarding looking costs, when Part 69 of the Commission's rules requires rates for interstate access services to recover fully distributed costs plus a reasonable return on booked investments.

The Filed Rate Doctrine holds that the "respective rights of carriers and customers with respect to interstate, common carrier communications services are governed by tariffs filed before the Commission pursuant to Section 203 of the Communications Act. Effective tariffs are 'the law' between customers and carriers."[38] The Report and Order violates this long-standing doctrine by not allowing ILECs to charge access tariff rates for unbundled network elements used to provide access service.

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[37] 47 U.S.C. § 203(c).

[38] Richman Bros. Records, Inc. v. U. S. Sprint Communications Co., Inc., 10 FCC Rcd 13639, para. 11 (Com. Car. Bur., 1995) (citing 47 U.S.C. Section 203; Carter v. American Tel. & Tel. Co., 365 F.2d 486, 496 (5th Cir. 1966), cert. denied, 385 U.S. 1008 (1967). See Keogh v. Chicago & Northwestern Ry. Co., 260 U.S. 156, 163 (1922). See also Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571 (1981); Maislin Indus., U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990)).

IV. THE COMMISSION'S REPORT AND ORDER VIOLATES ITS RATE OF RETURN REGULATIONS.

The Commission's Report and Order violates the Commission's rate of return regulations by precluding ILECs from recovering the full amount of their interstate access revenue requirement when an interexchange carrier purchases access service using unbundled network elements.[39] The Commission's rules provide for an authorized interstate rate of return for interstate access services provided by ILECs, establish calculations for determination of the authorized interstate rate of return[40] and require monitoring reports to be filed by ILECs with the Commission.[41]

The ILECs' rate of return is ingrained in the Commission's rules and decisions. However, the Report and Order denies the Rural Telephone Companies any opportunity to earn their authorized interstate rate of return when IXCs use unbundled network elements to obtain access service.[42] This Commission action is contrary to its own rules and precedent. The Commission's decision to deviate from its rules and precedent violates the Administrative Procedure Act ("APA"). The APA requires that all decisions "shall include a statement of . . . findings and conclusion, and the reasons or bases therefor, on all material issues of fact, law, or discretion presented on the record."[43] The absence of the APA-required explanation is fatal to

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39 See Report and Order at ¶ 337.

40 See 47 C.F.R. §§ 61.39(c) and 61.50(j).

41 See 47 C.F.R. §§ 61.39(c), 65.600(b), 65.600(d)(1) and 65.702(a).

42 See Report and Order at ¶ 337.

43 5 U.S.C. §557(c)(3). See also See v. Washington Metro. Area Transit Auth., 36 F.3d 375, 384-386 (4th Cir. 1994).

the validity of an administrative decision.[44] As the Commission has failed to articulate a "satisfactory explanation for its action," and has "entirely failed to consider an important aspect of the problem," its decision in the Report and Order can only be considered to be arbitrary and capricious.[45]

When Congress required the provision of unbundled network elements for local service, it intended for the rate of return regulation of interstate access services to be maintained. Section 251(g) of the Act states:

> On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.[46]

The Commission has not provided any sustainable basis upon which to suddenly depart from its rate of return regulation of interstate access services whether they be provided on a bundled or unbundled basis. Thus, the latter remain in place pursuant to Section 251(g) of the Act.[47] The Eighth Circuit agrees with this reading of the Act.

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44 See Garrett v. FCC, 513 F.2d 1056, 1060 (D.C. Cir. 1975); Anglo v. Canadian Shipping Co. v. FMC, 310 F.2d 606, 617 (9th Cir. 1962) (citing Saginaw Broadcasting Co. v. FCC, 96 F.2d 554, 563 (D.C. Cir. 1938)).

45 See Omnipoint Corp v. FCC, 78 F.3d 620, 632 (D.C. Cir. 1996), citing Atlantic Tele-Network, Inc. v. FCC, 59 F.3d 1384, 1389 (D.C. Cir. 1995), and Motor Veniche Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29 (1983).

46 47 U.S.C. § 251(g).

47 Id.

> The Act plainly preserves certain rate regimes already in place . . . . [T]he LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the pre-Act regulations and rates. This section leaves the door open for the promulgation of new rates at some future date, but any possible new exchange access rates for interstate calls will not carry the same deadline or the same cost-based restrictions as will those for interconnection and unbundled network elements specifically mentioned in § 252(d)(1).[48]

V. THE REPORT AND ORDER VIOLATES THE REGULATORY FLEXIBILITY ACT.

In adopting new regulations, the Regulatory Flexibility Act ("RFA") requires the Commission to consider significant alternatives that minimize the impact on small businesses.[49] The Commission failed to consider any alternatives minimizing the impact of its Report and Order, such as treating rural telephone companies differently than price-cap LECs for purposes of rate of return regulation of interstate access service provided on an unbundled basis. Such an alternative would minimize the impact of the Report and Order on small rural telephone companies. The Commission failed to sufficiently consider alternative regulatory options for its treatment of rural telephone companies, thus violating the RFA.

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48 Competitive Telecommunications Association v. Federal Communications Commission, No. 96-3604 at pp. 8-9 (8th Cir. 1997).

49 5 U.S.C.§ 603, et seq.

VI. CONCLUSION.

For all the foregoing reasons, the Rural Telephone Companies urge the Commission to reconsider its First Report and Order.

Respectfully submitted,

RURAL TELEPHONE COMPANIES

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WP/92923.4D

EXHIBIT ONE

Alenco Communications, Inc.	Joshua	TX
Amana Society Service Company	Amana	IA
Baraga Telephone Company	Baraga	MI
Barry County Telephone Company	Delton	MI
Bay Springs Telephone Company, Inc.	Bay Springs	MS
Bloomingdale Telephone Company	Bloomingdale	IN
Blue Earth Valley Telephone Co.	Blue Earth	MN
Bruce Telephone Company	Bruce	MS
CFW Communications	Waynesboro	VA
Citizens Tel. Co. of Kecksburg	Mammoth	PA
Citizens Telephone Corp.	Warren	IN
Clements Telephone Company	Red Wood Falls	MN
Climax Telephone Company	Climax	MI
Craigville Telephone Co., Inc.	Craigville	IN
Crockett Telephone Company	Bradford	TN
Dixville Telephone Company	Dixville Notch	NH
Doylestown Telephone Company	Doylestown	OH
Dunbarton Telephone Co., Inc.	Dunbarton	NH
Easton Telephone Company	Blue Earth	MN
Eckles Telephone Company	Blue Earth	MN
Elkhart Telephone Company	Elkhart	KS
Farmers Coop Telephone Company	Dysart	IA
Farmers Mutual Telephone Co-MN	Bellingham	MN
Flat Rock Mutual Tel. Co.	Flat Rock	IL
Fort Jennings Telephone Co.	Fort Jennings	OH

Geetingsville Tel Co Inc.	Frankfort	IN
Graceba Total Communications Inc.	Ashford	AL
Granby Tel & Tlg Company-MA	Granby	MA
Hartington Telephone Company	Hartington	NE
Hickory Telephone Company	Hickory	PA
Hollis Telephone Company	Wilton	NH
Hot Springs Telephone Co.	Missoula	MT
Huxley Cooperative Tel Co	Huxley	IA
Ironton Telephone Company	Coplay	PA
Jefferson Telephone Co., Inc.	Jefferson	SD
Kadoka Telephone Compnay	Kadoka	SD
Kaleva Telephone Company	Kaleva	MI
Kalida Telephone Company, Inc.	Kalida	OH
Laurel Highland Telephone Co.	Stahlstown	PA
Ligonier Telephone Company	Ligonier	IN
Mankato Citizens Tel Co.	Mankato	MN
Manti Telephone Company	Manti	UT
McClure Telephone Company	McClue	OH
Merchants & Farmers Tel. Co.	Hillsboro	IN
Mid Cenury Telephone Coop Inc.	Canton	IL
Mid Communications Tel Co	Mankato	MN
Middle Point Home Tel Co	Middle Point	OH
Midstate Telephone Co - ND	Stanley	ND
Millry Telephone Company, Inc.	Millry	AL
Minnesota Lake Telephone Co	Minnesota Lake	MN
Mt. Angel Telephone Company	Mt. Angel	OR
National Telephone Company of Alabama	Cherokee	AL

New Lisbon Telephone Company	New Lisbon	IN
North Eastern Pennsylvania Telephone Co.	Forest City	PA
North English Coop Tel Co	North English	IA
Northwest Iowa Telephone Company	Dakota Dunes	SD
Northwestern Indiana Tel. Co.	Hebron	IN
Nova Telephone Company	Nova	OH
Odin Telephone Exchange, Inc.	Odin	IL
Orwell Telephone Company	Orwell	OH
Palmerton Telephone Company	Palmerton	PA
Panhandle Telephone Coop, Inc.	Guymon	OK
Panora Cooperative Tel. Assn	Panora	IA
Pattersonville Telephone Co.	Rotterdam Junction	NY
Pennsylvania Telephone Co	Jersey Shore	PA
Peoples Mutual Telephone Co	Gretna	VA
Peoples Telephone Company, Inc.	Erin	TN
Pierce Telephone Company, Inc.	Pierce	NE
Pinnacle Communications	Lavaca	AR
Prairie Grove Telephone Co	Prairie Grove	AR
Pymatuning Independent Tel Co	Greenville	PA
Redwood County Telephone Co.	Redwood Falls	MN
Roanoke Telephone Co., Inc.	Roanoke	AL
Roberts County Tel Coop Assn	New Effington	SD
Ronan Telephone Company	Ronan	MT
Searsboro Telephone Company	Searsboro	IA
Shell Rock Telephone Company	Shell Rock	IA
South Canaan Telephone Company	South Canaan	PA
State Long Distance Tel Co	Elkhorn	WI

State Telephone Company	Coxsakie	NY
Stayton Coopeartive Tel Co	Stayton	OR
Stockholm-Standburg Tel Co	Stockholm	SD
Swayzee Telephone Company	Swayzee	IN
Sycamore Telephone Company	Sycamore	OH
Tri County Telephone Co., - IN	New Richmond	IN
Van Horne Coop. Telephone Co	Van Horne	IA
Volcano Telephone Company	Pine Grove	CA
West Side - WV Telephone Company	Morgantown	WV
West Side - PA Telephone Company	Morgantown	WV
West Tennessee Telephone Co., Inc.	Bradford	TN
Western Telephone Company - SD	Faulkton	SD
Wikstrom Telephone Company, Inc.	Karlstad	MN
Wilton Telephone Company - NH	Wilton	NH
Yadkin Valley Telephone Memb Corp	Yadkinville	NC
Yukon-Waltz Telephone Company	Yukon	PA

EXHIBIT TWO

This exhibit is not available to the public because it contains proprietary commercial information. See 47 C.F.R. § 0.457(d). The Rural Telephone Companies are individually filing this exhibit under separate cover pursuant to 47 C.F.R. § 0.459.