

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

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In the Matter of)	
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Federal State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Low-Volume Long Distance Users)	CC Docket No. 99-249
)	
Access Charge Reform)	CC Docket No. 96-262

**COMMENTS OF THE
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

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The Rural Independent Competitive Alliance (“RICA”), by counsel, hereby files these comments in response to the Public Notice, DA 00-533, released March 8, 2000, requesting comment on the Coalition for Affordable Local and Long Distance Service (“CALLS”) Modified Proposal in the above-captioned proceeding (the “Modified CALLS Proposal”).

Following adoption of the Telecommunications Act of 1996, many Rural Telephone Companies established competitive local exchange carrier (“CLEC”) operations to bring improved service to the small rural towns and surrounding areas adjacent to their existing service territories. Generally, these areas have received only minimal investment or attention from the large carriers serving them. These rural CLECs have offered facilities-based competition wherever possible and, by necessity, have established their local rates at levels customers will find competitive. In recognition of common regulatory and legal issues facing them, many of these rural CLECs formed

an alliance under the name Rural Independent Competitive Alliance. RICA filed comments in the Commission's Access Charge Reform rulemaking (Docket No. 96-262) in regard to the reasonableness of CLEC access charges.¹ As pointed out by RICA in the Access Reform proceeding, AT&T and Sprint have refused to pay validly tariffed interstate charges on the basis that the charges exceed those of the incumbent LEC serving the same territory. For the FCC to reduce access charges of incumbent LECs without also addressing the reasonableness of CLEC charges and the obligation of interexchange carriers ("IXCs") to serve all customers who request service on equal terms and conditions regardless of their choice of LEC or the level of access charges of the LEC, severely jeopardizes the ability to provide competitive local exchange service to rural areas. Thus, RICA urges the Commission to coordinate action upon the Modified CALLS Proposal with action upon the Access Reform Further Notice for the following reasons:

1. **The Issues Regarding Price Cap Carrier Access Charges, CLEC Access Rates, and the Obligations of IXCs to Pay CLEC Access Charges Must Be Coordinated**
 - a. **The Access Reform Further Notice Was Adopted to Address Issues Involving the Disparity Between Incumbent LEC and CLEC Access Charges**

In its Access Reform Further Notice, the Commission requested comment as to the reasonableness of CLEC access charges and whether the Commission might adopt rules to address,

¹ See In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered By Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA: Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-262, 94-1, 98-157; CCB/CPD File No. 98-63 (Aug. 27, 1999) (hereinafter "Access Reform Further Notice").

by the least intrusive means, any failure of market forces to constrain CLEC access charges.² In explaining why the Further Notice was necessary, the Commission stated that in its previously adopted Notice of Proposed Rulemaking in the Access Charge Reform proceeding, it had decided not to adopt any regulations governing CLEC access charges unless and until there were “sufficient indications that CLECs were imposing unreasonable terminating access charges.”³ It then stated that in light of recent allegations made by IXC’s that “a substantial number of CLECs impose switched access charges that are significantly higher than those charged by the incumbent LECs with which they compete,” it thus was compelled to initiate the inquiry into the reasonableness of CLEC access charges.⁴

b. If the Modified CALLS Proposal Is Adopted, The Disparity Between The ILEC and CLEC Access Charges Will Increase Thereby Exacerbating the Problem That Led to the issuance of the Access Reform Further Notice

In its proposal, the members of CALLS recommended a \$2.1 billion reduction in per minute switched access charges on July 1, 2000, a nearly 50% reduction in switched access rates over five years and reductions in special access rates for price cap LECs.⁵ Thus, if adopted, the Modified CALLS Proposal will significantly reduce access charges for the majority of the incumbent LECs.

²Access Reform Further Notice, CC Docket 96-262 at para. 7.

³Id. at para. 237.

⁴Id. at para. 238. The Commission noted that its primary source of the allegations was AT&T.

⁵Modified CALLS Proposal at 2-4. The members of CALLS are AT&T, Bell Atlantic, BellSouth, GTE, Sprint and SBC. See Public Notice, FCC 99-214, rel. Aug. 11, 1999.

Unless CLECs drastically decrease their access charges, the disparity between the access rates charged by the price cap incumbent LEC and the rates charged by the CLEC serving the same territory will increase.⁶

However, for rural CLECs, such a decrease to lessen the disparity is not possible. In order to remain in business, rural CLECs must have a sufficient amount of access revenue to allow for rational cost recovery. Because their costs are incurred only in the rural, low density areas, their access rates do not benefit from the study area wide or larger averaging of the large carriers with which they compete. Even without averaging, because the rural CLECs have made substantial investments in modern facilities, their costs are often higher than those associated with the obsolete, largely depreciated facilities of the large carrier. Thus, unless other measures are adopted to offset the high costs of providing competitive rural local exchange service, CLEC access charges will remain at their current level while the incumbent price cap LEC's charges dramatically decline.⁷

The substantial decrease in incumbent LEC access charges brought about by the adoption of the Modified CALLS Proposal with CLECs continuing to maintain their access charges at the same level will only exacerbate the claims made by IXC's such as AT&T and Sprint that CLEC

⁶RICA recognizes that even in the absence of the CALLS Proposal, the Commission may require reduction in price cap carrier access charges.

⁷ One such measure to offset the high cost of providing competitive rural local exchange service could be the use by non-price cap CLECs of the new federal universal service support of \$650 million referenced in the Modified CALLS Proposal. See Modified CALLS Proposal Appendix A at 3. Although the Proposal clearly states that the new universal service funding is to be "portable to other eligible telecommunications carriers," it does not clarify whether CLECs that would not be subject to the reductions mandated by the Modified CALLS Proposal would be able to use the new funds.

access charges are unreasonable as they contend that CLEC charges are unreasonable if they exceed the charges of the incumbent LEC serving the same territory.⁸ Additionally, as referenced by many CLEC Commenters in the Access Charge Reform proceeding, AT&T and Sprint have refused to pay CLEC access charges if the charges are in excess of the incumbent LEC's access charges.⁹ If the Modified CALLS Proposal is adopted prior to the determination by the Commission as to the reasonableness of CLEC access rates, the amount of CLEC access charges that AT&T and Sprint refuse to pay will likely increase significantly. To avoid exacerbating the situation, the Commission must make its determination as to what constitutes reasonable CLEC access charges prior to or simultaneously with the adoption of the Modified CALLS Proposal.

2. The Access Reform Further Notice Must Be Acted Upon Either Prior To Or Simultaneously With the Modified CALLS Proposal Because Many of the Issues are Intertwined

RICA contends that as the Commission weighs the Modified CALLS Proposal, it must also consider and rule upon the response of Commenters to critical issues raised in the Access Reform Further Notice because the issues are intertwined. For example, a large portion of the Comments and Reply Comments in Access Reform proceeding overwhelmingly supported a benchmark

⁸See AT&T's Access Charge Reform Comments at 28 (alleging that CLEC access rates are at "supracompetitive levels" because they are in excess of incumbent LEC levels in the same service territories served by the CLECs); Sprint's Comments at 20 (access charges of the incumbent LEC are "the only reasonable benchmark against which to judge the access rates of a CLEC").

⁹See Minnesota CLEC Consortium Access Charge Reform Comments at 1-2; Total Telecommunications Services' Comments at 1-3; MGC Communications' Comments at 2-3; RICA Reply Comments at 4-6.

approach.¹⁰ If the Commission were to act upon the CALLS Proposal which requires significant reduction in the access rates of the incumbent price cap LECs, many of whom serve the same territory as the CLECs, and then review and act upon the Access Reform Comments, a severe injustice would be done, since the Access Reform Comments were made in the context of an entirely different incumbent LEC rate structure.

Another example of the way the two proceedings are intertwined is the issue raised in the Access Reform Further Notice as to whether “section 254(g) permits IXCs to charge different rates to end users *within the same geographic area* based upon the level of access charges levied by the end user’s local exchange company.”¹¹ From the letters submitted by AT&T and Sprint attached to the Modified CALLS Proposal it appears that the savings that they agree to flow through to customers will only be passed onto customers of the incumbent LECs that participate in the Modified CALLS plan.¹²

RICA opposes any such attempt to charge different rates to end users within the same geographic area based upon the level of access charges levied by the end user’s local exchange

¹⁰ See MediaOne Group’s Access Reform Comments at 4-7; Sprint’s Comments at 20-23; BellSouth’s Comments at 9-10; Focal Communications Corporation at 5.

¹¹ Access Reform Further Notice at para. 245 (emphasis in original).

¹² See Letters attached to the Modified CALLS Proposal - AT&T letter dated February 25, 2000 by Joel E. Lubin, Federal Government Affairs, Vice President (“*Fifth*, to the extent that AT&T realizes reductions in its access costs as a result of the reforms described above, it will, over the life of the plan, flow those savings through to residential and business customers”); Sprint letter dated February 25, 2000 by Richard Juhnke (“To the extent Sprint realizes a reduction in access costs from the CALLS plan, Sprint will flow through those savings over the life of the plan to both residential and business customers”).

company and calls upon the Commission to make its determination on this issue prior to or simultaneously with making its decision on the Modified CALLS Proposal. As RICA has argued in its Comments, that the fact that IXCs are required to charge the same rates in urban and rural areas, even though rural access is known to be more expensive, was a conscious decision by Congress to ameliorate the effects of the marketplace and to preserve the externality benefits of ubiquitous service. If IXCs are free to refuse to serve customers of rural CLECs because the IXC judges the access rates to be too high, there can be no doubt that the next move will be to refuse service to customers of rural ILECs unless their access rates are reduced to non-compensatory levels.¹³

¹³See RICA Access Charge Reform Comments at 14.

In conclusion, RICA recognizes there are significant pressures to reduce incumbent LEC access charges. However, it realizes that the reductions specified in the plan will have an impact on the on-going CLEC issues in the Commission's Access Charge Reform proceeding, the outcome of which will directly affect RICA members. Specifically, if the Commission fails to act upon the concerns raised by RICA in the Access Reform proceeding when it acts upon the Modified CALLS Proposal, the ability to provide competitive local exchange services in rural areas will be severely jeopardized. Therefore, RICA strongly urges the Commission to consider the two proceedings together and act upon them simultaneously.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Comments of the Rural Independent Competitive Alliance" was served on this 3rd day of April, 2000 by hand delivery to the following parties:



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