Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
	)	

ADDITIONAL COMMENTS
of the
MINNESOTA CLEC CONSORTIUM

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SUMMARY

The Commission should adopt a separate rural benchmark if the access rates of incumbent LECs are to be used to evaluate CLEC access rates. Such a benchmark should be based on public information and the population of the areas served by the CLECs. Benchmarks based on MSA boundaries are inappropriate because MSA boundaries are based on counties and include many very small cities and very rural areas. The rural benchmark should include a criteria, based on 47 U.S.C. § 153(37)(D), that would allow eligibility to a CLEC that has fewer than 15% of its access lines in communities of over 50,000 inhabitants.

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The Minnesota CLEC Consortium ("MCC") hereby submits additional comments in response to the Common Carrier Bureau's request for further information regarding a "rural exemption" that would apply to the "benchmark" level of interstate access charges which would be presumed just and reasonable.[1] Such a benchmark is needed if incumbent LEC access rates are to be used to evaluate the access rates of competitive local exchange carriers ("CLECs"). A rural benchmark should be easy to apply and administer. Rates below the benchmark should remain subject to challenge under Section 208.[2] CLECs should also have the right to establish rates above the benchmark if their costs justify such rates. Since Interexchange Carriers ("IXCs") would have the right to challenge rates at or below the benchmark, the criteria for qualification for the benchmark need not be made overly restrictive or complex in an effort to prevent every possible situation where unique factors may make application of a rural benchmark problematic.

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[1] *Common Carrier Bureau Seeks Additional Comments on Issues Relating to CLEC Access Charge Reform,* Public Notice, Dec. 7, 2000, DA 00-2751, 65 Fed. Reg. 77545, Dec. 12, 2000 ("Public Notice"). The Comment date was later extended from December 27, 2000 to January 11, 2001, and the Reply Comment date from January 11, 2001 to January 26, 2001 (*Common Carrier Bureau Grants Motion for Limited Extension of Time for Filing Comments and Reply Comments on Issues Related to CLEC Access Charge Reform*, Public Notice, Dec. 20, 2000, DA 00-2866).

[2] 47 U.S.C. § 208

I. THE COMMISSION SHOULD ADOPT BENCHMARK ACCESS RATES FOR RURAL CLECS.

A. The Refusal Of IXCs To Interconnect With Rural CLECs That Do Not Acquiesce In Unilateral Demands For Access Charge Reductions Threatens Competition In Rural Areas.

The ability of rural CLECs, including members of the MCC, to compete in rural areas is threatened by the illegal actions of certain IXCs that have refused to interconnect their facilities to CLECs for acceptance of originating traffic or delivery of terminating traffic,unless preferential access charge reductions demanded by those IXCs are granted by the rural CLECs. AT&T, in particular, has severely impaired the ability of rural CLECs, including MCC members, to compete against large incumbent LECs by instructing those rural CLECs to cease delivery of originating traffic to AT&T, to cease presubscribing customers to AT&T, and prevent the delivery of terminating traffic.[3]

Inability to provide access to AT&T originating service is a severe impediment to competitive CLEC service offerings. Inability to receive incoming long distance calls from AT&T customers would render any CLEC service offering totally unacceptable to virtually all potential customers. The Commission needs to take the necessary steps to assure that the facilities of all carriers are interconnected to prevent fragmentation of the nation-wide network.

B. A Benchmark For Rural CLEC Access Rates Should Be Adopted To Assist In Preventing Use Of Unlawful Self Help Remedies By Some IXCs.

A separate benchmark for rural CLEC rates is appropriate because the costs incurred by rural CLECs will be higher than the average costs of most of the large incumbent LECs with

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[3] Rural Independent Competitive Alliance ("RICA") Request for Emergency Relief, filed February 18, 2000 and MCC Request for Emergency Relief, filed May 5, 2000.

which they compete. Use of the access rates of the incumbent LECs to establish these benchmarks would be inappropriate because the access rates of the large incumbent LECs reflect their lower average costs, which often result from the lower costs of their primarily urban serving areas. As a result, use of the access rates of large LECs as a benchmark would systematically deprive rural CLECs of an opportunity to recover their costs of providing service and will discourage local competition in higher cost areas.

When the benchmark is adopted, the Commission should simultaneously make it clear that IXCs may not resort to self help remedies that include refusal to accept traffic from CLEC customers, threats of refusal to deliver terminating traffic from IXC customers to CLEC customers, and unlawful demands for reductions in access rates. Such self help remedies are completely unjustified under current law, which provided IXCs the opportunity to submit complaints under Section 208. The benchmark should also preserve the ability of IXCs to challenge rates below the benchmark and the ability of CLECs to request approval of access rates above the benchmark, if the costs of the CLECs merit such reductions or increases.

Adopting a benchmark and preventing self help refusals to interconnect will fulfill the Congressional intent reflected in Section 251(a)[4] that the facilities of all carriers be interconnected to all other carriers and prevent the fragmentation of the nationwide network.

C. The Rural Benchmark Should Be Based On Readily Available Public Information.

In order to be effective, any benchmark adopted by the Commission must be administratively straight forward in its application so that disputes over its application are

[4] 47 U.S.C. § 251(a).

minimized. In order to achieve that objective, it is essential that the benchmark be based on readily available public information. The Commission has requested comment on several alternatives.

1. The RICA Benchmark Proposal.

The Public Notice inviting further comments in this proceeding requested comments on several alternatives for a rural benchmark, including a benchmark that had been previously proposed by the Rural Independent Competitive Alliance ("RICA").[5] The RICA benchmark would apply to a CLEC "to the extent that" the CLEC served areas that did not include an "incorporated place" of over 20,000 inhabitants or served fewer than 50,000 access lines. The RICA proposal follows the structure of the alternatives for definition of a "rural telephone company" under Sections 153(37)(A) and (B).[6] The RICA proposal anticipates that some areas served by a given CLEC could be covered by the rural benchmark, and other areas would not be covered by the rural benchmark.

The RICA proposed benchmark included another alternative, service to less than 50,000 access lines. A criteria based solely on the number of access lines served (50,000) could allow use of a rural benchmark for a start-up CLEC that serves only very dense, urban areas. For that reason, such an alternative may be objectionable. If that alternative is eliminated, however, a second criteria should be added that would recognize that some essentially rural CLECs may have a small percentage of customers in larger communities without requiring those CLECs to develop separate access rates for different areas that may be served from the same switch.

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[5] Public Notice at 3.

[6] 47 U.S.C. § § 153(37)(A) and (B).

2. An Alternative Criteria Based On Section 153(37)(D) Would Be Appropriate.

An approach that would apply the rural benchmark to some, but not all, of a CLEC's access lines would impose added costs on CLECs that are not typically imposed on incumbent LECs. For example, for a CLEC that has a single switch that serves both "rural" and non-rural areas, the application of different access charges for different customers would impose considerable added complications. Accordingly, there are advantages to an approach that would not effectively require a CLEC to develop different access charges for different areas.

A benchmark that allowed service to a limited percentage of access lines in larger communities would prevent CLECs that concentrate on larger, urban areas from qualifying while allowing essentially rural CLECs to maintain a single access rate. Such an alternative benchmark could be based on the criteria of Section 153(37)(D) and allow a CLEC to qualify for the rural benchmark (for all of its access rates) if it had "fewer than 15% of its access lines in communities of over 50,000 inhabitants based on the most recently available population statistics of the Bureau of Census."

Congress has concluded that incumbent LECs that have fewer than 15% of their access lines in communities of over 50,000 inhabitants are "rural" and lack the economies of scale of larger incumbent LECs. That criteria would be appropriate for classification of CLECs for a rural benchmark as well.

3. A Minimum 50,000 Inhabitant Cutoff Would Be Needed If Population Was Selected As The Sole Criteria.

If a benchmark is to be based solely on population of communities served, the selection of the population cutoff becomes critical. The population cutoff should be increased from 20,000 inhabitants to at least 50,000 inhabitants to better reflect the distinction between high cost areas and the low cost urban areas that predominate for most large incumbent LECs (and enable large incumbent LECs to develop low access rates). In Minnesota, there are approximately 27 cities of over 20,000 inhabitants (the RICA population proposal) and under 50,000 inhabitants. Of these 27 cities, 22 are suburban and ex-urban communities in the Minneapolis-St. Paul Metropolitan Statistical Area, and 5 are in other counties of Minnesota.

A population threshold higher than 50,000 may be needed for CLECs that provide service to primarily suburban areas, or to small to medium sized cities, which have costs higher than many incumbents, even if not as high as in very low population rural areas. Accordingly, if the Commission selects a single criteria based on population for a rural benchmark is should increase the population cutoff to at least 50,000 inhabitants.

4. The Sprint Proposal Is Flawed And Should Not Be Adopted.

Sprint also proposed criteria for a rural benchmark, but those criteria are flawed and should be rejected. Sprint's proposal would exclude all CLECs that have any operations within Metropolitan Statistical Areas ("MSAs") from eligibility for a rural benchmark. For reasons more fully set forth below, use of MSAs is inappropriate because MSAs are determined by county boundaries and include many very sparsely populated areas.

Sprint also proposed that the rural benchmark be available only if the competing incumbent LEC operates in both rural and non-rural areas. Such an approach would lead to added administrative complications in determining whether the rural benchmark is applicable, and

may require the rural CLEC to maintain two different access rates for adjacent parts of its service area. Further, there is no indication that it is necessary to protect IXCs. In those rare cases where the incumbent LEC serves only rural areas, the IXCs may file a complaint under Section 208 if the difference between the rural CLEC access rate and the incumbent LEC access rate is perceived as unreasonable by the IXC.

D. Other Alternatives Identified In The Public Notice Would Lead To Unnecessary Administrative Difficulties.

The Public Notice asked for comment on several questions and other alternatives.[7] MCC's responses to each of these questions and alternatives are set forth below.

1. MSAs Boundaries Will Not Provide A Reasonable Basis For A Rural Benchmark.

The Public Notice asked for comment on a benchmark test based on MSA boundaries.[8] A test based on MSA boundaries would not be appropriate because MSAs include the entire county that includes the core city of the MSA, and there are many very rural areas located inside MSAs, particularly in states that have large counties. The Minnesota counties within MSAs (other than Minneapolis/St. Paul) and their non-core cities and populations are as follows:[9]

MSA Name	Minn. County	Estimated 1999 Population Outside Core City	Number of Non-Core Cities	Number of Non-Core Cities Over 10,000 Persons
Duluth-Superior	St. Louis	112,553	25	1

[7] Public Notice at 2.

[8] Public Notice at 2.

[9] Source: Population Estimates Program, Population Division, U.S. Census Bureau, Washington, DC 20233, http://www.census.gov/population/estimates.

Fargo-Moorhead	Clay	18,332	10	0
Grand Forks	Polk	23,728	14	0
Rochester	Olmsted	36,285	7	0
St. Cloud	Benton/Stearns	113,012	36	0
LaCrosse, WI	Houston	19,489	7	0
Total		323,399		

While these the non-core portions of these MSAs have significant populations that could benefit from competition provided by CLECs, it is clear that these areas would be rural by a reasonable definition. Within the Minnesota counties of these 6 MSAs, there is only 1 non-core city of over 10,000 inhabitants, even though there are over 320,000 inhabitants outside of the core MSA cities. Accordingly, a rural benchmark should not be limited to areas outside of MSAs.

2. The Benchmark Test Should Not Require A Determination Of The Density Of The Specific Area Served By The CLEC.

The Public Notice also asked for comment on whether the benchmark should include a measure of the density of the area served by the CLEC.[10] The use of a density criteria would be inappropriate because: 1) the density of a particular CLEC's serving area may not conform to other geographical divisions and the density would be very difficult to measure; and 2) there are no generally recognized standards for measuring such density. Application of the benchmarks should be straightforward and based on objective and readily available information, such as information from the Bureau of Census. The criteria should not require calculations or measurements that require information that is not publicly available or that is subject to substantial interpretation or dispute. Use of such calculations or measurements will lead to many disputes and unnecessary costs.

3. The Benchmark Should Not Be Based On Whether Service Is Provided Within Or Outside "Town" Boundaries.

[10] Public Notice at 2.

The Public Notice also asked whether the benchmark should distinguish between service within the boundaries of a small town and service outside of those boundaries.[11] Such a distinction should not be applied because it would be extremely difficult and costly to measure and would, in effect, require rural CLECs to deaverage their access charges within "exchange" boundaries, a burden that is not imposed on incumbent LECs.

Determination of whether customers are within or outside of municipal boundaries would require costly customer-by-customer determinations, making implementation of the benchmark costly and slow. Further, even if the information could be agreed to, the rural CLEC would then be in a position of being required to apply different access rates in different parts of a single "exchange" area. There is no established pattern for implementation of such an approach, and incumbent LECs have not been required to implement deaveraging of access rates, much less to such a degree.

4. The Benchmark Should Be Based On Population Criteria Within The CLEC's Service Area.

The Public Notice asked for comment on whether the benchmark should be related to the presence of a city within a particular distance from the CLEC's service area.[12] That criteria should not be used because the presence of a city outside of the area is both logically and practically irrelevant to the CLEC's costs, as shown by the data regarding the Minnesota MSAs in Section D.1 above. Further, population data for places within the CLEC's service area is available and provides a far better indication of the CLEC's costs. As discussed above, the MCC

[11] Id. at 2.
[12] Id. at 2.

supports application of a benchmark based on population data from the Bureau of Census for places within the CLEC's service area.

5. The Benchmark Should Not Be Based On Universal Service Funding Criteria.

The Public Notice requested comment on whether the rural benchmark should be related to universal service funding.[13] Tying the benchmark to either eligibility for universal service support or on receipt of that support is inappropriate because it would force CLECs to incur the costs to obtain state certification as an eligible telecommunications carrier for many areas for which no funding is available.

Many large incumbent LECs provide service in some high cost, rural areas, but may receive no universal service support because the average costs of the large incumbent LEC are low due to their much larger numbers of low cost access lines in low cost urban service areas. Since funding for competitive CLECs is based on the funding available to the incumbent LECs, few CLECs will incur the expense of obtaining state certification when no funding will be available. Accordingly, use of such a criteria would be inappropriate.

6. Application Of The Rural Benchmark Should Be Based On The Location Of A CLEC's Customers, Not The Location Of The CLEC Switch.

The Public Notice requested comment on whether the location of the CLEC switch would be used to determine eligibility.[14] The location of the CLEC's customers should determine

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[13] Id. at 2.

[14] Id. at 3.

application of the rural benchmark because the location of the customers is the best indicator of the CLEC's costs. The location of the switch, in contrast, does not determine the CLEC's costs.

The location of the CLEC's switch may be the result of a number of considerations, including central location if the switch serves a number of separate communities, as is true for many rural CLECs. That location is, at best, a secondary indicator of the costs of serving the CLEC's customers. The cost of serving those customers can be better estimated by their specific location and the populations of those locations.

7. The Rural Benchmark Should Not Be Based On The Access Volume Generated By the CLECs' Customers Or The Types Of Customers Served By The CLECs.

The Public Notice asked whether the rural benchmark should be based on the amount of access traffic generated by a CLEC's customers or the types of customers served by the CLEC.[15] Those criteria should not be applied because there are no established standards for comparison, efforts to apply this criteria would involve significant costs, and the results would be subject to ongoing, costly disputes. The benchmark criteria should resolve most common issues in order to minimize disputes and provide guidance for most situations. The criteria should not attempt to resolve all situations or to prevent all possible problems. Rather, unusual situations should be left for individual determination under section 208.

II. CONCLUSION.

The Commission should adopt a rural benchmark that includes: 1) any CLEC to the extent that it provides service in communities of fewer than 20,000 inhabitants; or 2) all

[15] Id. at 3.

operations of any CLEC that has fewer than 15% of its access lines in communities of over 50,000 inhabitants.

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By *__/s/ Richard J. Johnson_____*

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