but a small subset of CLECs, *i.e.*, those providing service exclusively in rural areas. Sprint fails to provide any justification for this limitation. As we have demonstrated above, CLECs operating in rural areas experience higher costs of providing access service. There is no basis to deny CLECs recovery of their costs simply because they provide service not just in rural areas. Unlike ILECs who charge rates for switched access that are geographically averaged across study areas, CLECs are constrained by competitive pressures to offset their costs in one region through service in another region.[41] More importantly, such an approach would be inimical to the approach that the Commission has adhered to with ILECs in regard to density pricing zones where the Commission seeks to ensure that the zones reflect cost characteristics.[42]

If the Commission's goal is truly to move towards costs-based rates for access service, then the Commission must recognize and account for the higher costs that CLECs incur. Sprint's proposed definition would arbitrarily deny to CLECs operating in rural areas the ability to recover their costs of providing access service in those areas. CLECs who operate in both high cost and low-cost areas will be hamstrung in their ability to average out costs if they are subject to a restrictive benchmark in low cost areas and denied an exemption in high cost areas.

2. RICA Definition

RICA proffers the following definition for the rural exemption:

> Defines a rural CLEC as a CLEC that provides telephone exchange service and other telecommunications services to any area that does not include either (i) any incorporated place of 20,000 inhabitants or more; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of Census; or Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines.[43]

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41 *See Pricing Flexibility Order* at ¶ 58.

42 *Id.*. Density zone pricing permits ILECs to reduce gradually rates in geographic areas that are less costly to serve, and to increase rates in areas that are more costly to serve. *Id.* at ¶ 13, n. 24.

43 CC Docket No. 96-262, *Ex Parte Letter of the Rural Independent Competitive Alliance* at p. 1 (August 4, 2000).

This definition posits either a population density approach or a volume of access lines approach. The Commenters do not have a problem with a general population density approach because their proposed definition is based on MSAs that are defined by a population amount above 50,000.[44] The problem with RICA's definition is that it is too limiting in its formulation of what is a high cost area. As a result, the definition does not accurately reflect the realities of the CLEC access market.

The Commenters support a top 50 MSA-based approach because most CLEC switches are located within the density zone 1 of the top 50 MSAs, and serving customers outside these areas would substantially increase the cost of providing access service. RICA's definition is more rooted in the traditional conception of network architecture, *i.e.*, that towns within urban areas or towns of 20,000 or more inhabitants would be close to a LEC's serving wire center. This may be the case for ILECs or independent telephone companies, but not for CLECs. As the ICC Report noted, CLECs:

> Typically enter a market with a distributed network architecture that substitutes longer transport routes for multiple switches and outside plant facilities while at the same time providing origination/termination services within geographic areas comparable to those served by ILEC tandems. Though CLECs generally don't deploy stand-alone Class 5 (end office) and Class 4 (tandem) switches, their distributed architecture provides similar organization and termination services across comparable geographic areas. By utilizing SONET nodes collocated in multiple ILEC central offices, CLECs often are able to serve a customer base spread across an entire state or LATA using a single, integrated end office and tandem switching platform.[45]

Because the CLEC switch will most likely be within the density zone 1 of the top 50 MSAs, the top 50 MSAs approach would be the one most in accord with the CLECs costs for

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[44] While our definition ostensibly creates a dividing line based on population the driving force is not the particular population density, but the fact that MSAs are more in accord with the realities of the CLEC network architecture.

[45] ICC Report at p. 5.

switching access. The most important factor will not be if a customer is in a town of 20,000 or more, but whether the customer is outside the MSA. If the customer is outside the MSA the costs of providing access will rise. A customer may be in a town of 5,000 people within an MSA, but because that customer will be closer to a CLEC switch, the costs of providing access service will be lower.

A strict population density approach is also problematic in that there is no magic population figure where costs increase. The RICA survey showed that CLECs operating in rural areas provide service to areas of varying population densities. The costs are likely to be significant in any of those areas. Furthermore, rural areas will likely be dotted with towns interspersed in sparsely populated areas. The costs of access service for the CLEC will not magically decrease when the town line is crossed.

A definition based on access lines is problematic because it would arbitrarily eliminate larger CLECs that provide service in both low cost and high cost areas. A large CLEC will still incur substantial costs for providing access service in rural and high cost areas, and as we have demonstrated, does not have the ability that larger ILECs have to offset these costs from other sources. If these CLECs are precluded from recovering the higher cost of providing access service, the CLECs will be effectively precluded from entering these markets, and the customers in these markets will be denied an opportunity to partake in a broad range of competitive services. If RICA's definition is adopted then small CLECs can provide service in rural areas because of the exemption, large ILECs can provide service due their ability to offset the high costs from charges in other areas, but larger CLECs will be excluded.

3. Statutory Definition

The Telecommunications Act defines a rural telephone company as a company:

> that provides (A) common carrier services to any local exchange carrier study area that does not include either (i) any incorporated place of 10,000 inhabitants or more, or any part thereof; or (ii) any territory incorporated or unincorporated included in an urbanized areas as defined by the Bureau of the Census; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (d) has less than 15% of its access line in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.[46]

However, there is no reason to believe that this definition bears any relationship to costs incurred in providing exchange access service. Rather, this definition was intended by Congress to serve in wholly unrelated areas, such as defining which ILECs could be exempt from unbundling obligations under the Act. Accordingly, the Commission should not employ the statutory definition of rural ILECs for the purpose of defining an exemption from benchmark regulation for CLECs.

The Commenters feel that the MSA approach offers a definition that is simple and easy to apply and most reflective of the realities of CLEC access service cost. If a carrier is providing service outside an MSA it should be allowed an exemption from whatever benchmark, if any, the Commission decides to set.[47] If the Commission is going to impose a benchmark on CLECs then it is vital that such a benchmark not only recognize the higher costs that CLECs face in providing access service, but that the Commission recognize that these higher costs are exacerbated in rural and other high cost areas. The Commission also needs to ensure that IXCs pay for the access services they receive. As the RICA report demonstrates, CLECs operating in rural areas are

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[46] 47 U.S.C. § 154(37)

[47] This exemption should not be tied to eligibility for USF support as RICA's survey demonstrates that many CLECs operating in rural areas are not receiving such support as of this date.

facing an even-greater threat of non-payment than CLECs in urban areas.[48] IXCs should be well attuned to higher access charges in rural and high cost areas as "independent telephone companies in these areas have always levied higher access charges than their urban counterparts."[49] Allowing a rural exemption for CLECs should not affect the IXCs' bottom-line. If a benchmark is implemented, a rural exemption is clearly warranted.

V. CONCLUSION

In summary, BayRing and Lightship believe that the Commission should not establish a benchmark for CLEC access rates. If the Commission does establish such a benchmark, it should be set well above ILEC rates. Finally, any benchmark adopted should not apply to a CLEC's provision of service outside of the density zone 1 area of the top 50 MSAs.

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48 RICA Report at p. 4.

49 Focal/Adelphia Comments at p. 18.

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I, Deborah A. Walker do hereby certify that on this 11th day of January, 2001 the foregoing Comments of BayRing Communications and Lightship Telecom, LLC were delivered by hand and first class mail to the following:

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