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.

Respectfully submitted,

Eric J. Branfman
Troy F. Tanner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500
Counsel for BayRing Communications and
Lightship Telecom, LLC

48 RICA Report at p. 4.

49 Focal/Adelphia Comments at p. 18.

CERTIFICATE OF SERVICE

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:

Deborah A. Walker

Deborah A. Walker

VIA HAND DELIVERY
Magalie Roman Salas, Esq., Secretary
Federal Communications Commission
The Portals - TW-A325
445 Twelfth Street, SW
Washington, DC 20554

VIA HAND DELIVERY
Debra Weiner
Federal Communications Commission
445 12th Street, S.W. - The Portals
Washington, DC 20554

VIA HAND DELIVERY
Rebecca Beynon
Federal Communications Commission
445 12th Street, S.W. - The Portals
Washington, DC 20554

VIA HAND DELIVERY
Kyle D. Dixon
Federal Communications Commission
445 12th Street, S.W.
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Christopher Wright
Federal Communications Commission
The Portals - 445 12th Street, S.W.
Fifth Floor
Washington, DC 20554

VIA HAND DELIVERY
Dorothy Atwood
Federal Communications Commission
Common Carrier Bureau
445 12th Street, S.W. - Suite 5A848
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Jane E. Jackson
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Richard Lerner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Tamara Preiss
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W. - Suite B201
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Laurence Bourne
Federal Communications Commission
445 12th Street, S.W.
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Aaron Goldschmidt
Federal Communications Commission
445 12th Street, S.W.
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Anna Gomez
Office of Chairman William E. Kennard
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Commissioner Susan Ness
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Jordan Goldstein
Office of Commissioner Susan Ness
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Commissioner Michael K. Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Commissioner Gloria Tristani
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Deena Shetler
Office of Commissioner Gloria Tristani
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
International Transcription Services
445 12th Street, SW - CY-B400
Washington, DC 20554

John T. Nakahata
Samuel L. Feder
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, DC 20036

Mark C. Rosenblum
Judy Sello
AT&T Corp
295 North Maple Avenue – Room 1135L2
Basking Ridge, New Jersey 07920

Gene C. Schaerr
James P. Young
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006

M. Robert Sutherland
Richard M. Sbaratta
Bellsouth
1155 Peachtree Street, NE – Suite 1700
Atlanta, Georgia 30309-3610

Gary M. Epstein
Richard Cameron
Latham & Watkins
1001 Pennsylvania Avenue, NW
Washington, DC 20554

Alfred G. Richter, Jr.
Roger K. Toppins
Michael J. Zpevak
Charles J. Scharnberg
SBC Telecommunications, Inc.
One Bell Plaza – Room 3003
Dallas, Texas 75202

Jay C. Keithley
Leon M. Kestenbaum
Peter N. Sywenki
Richard Juhnke
Sprint Corporation
1850 M Street NW – 11th Floor
Washington, DC 20036

Edward Shakin
1320 North Court House Road – 8th Floor
Arlington, Virginia 22201

Cheryl A. Tritt
Frank W. Krogh
Christa M. Parker
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20007

George Bochetto
Jeffrey W. Ogren
Bochetto & Lentz, P.C.
1524 Locust Street
Philadelphia, Pennsylvania 19102

George N. Barclay
Michael J. Ettner
General Services Administration
1800 F Street, NW - Room 4002
Washington, DC 20405

Douglas G. Bonner
Sana D. Coleman
Arent Fox Kintner Plotkin & Kahn PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Coleen Boothby
Stephen J. Rosen
Levine, Blaszak, Block & Boothby LLP
2001 L Street, NW - Suite 900
Washington, DC 20036

Michael J. Bradley
Richard J. Johnson
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129

Jonathan E. Canis
David A. Konuch
Michael B. Hazzard
Kelley Drye & Warren LLP
1200 19th Street, NW - Suite 500
Washington, DC 20036

David Cosson
Syliva Lesse
John Kuykendall
Kraskin, Lesse & Cosson, LLP
2120 L Street, NW - Suite 520
Washington, DC 20037

Brian Conboy
Thomas Jones
Christi Shewman
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Renee Roland Crittendon
1200 19th Street, NW
Washington, DC 20006

Jonathan Askin
Teresa K. Gaugter
ALTS
888 17th Street, NW
Washington, DC 20006

Donald C. Davis
Claudia Earls
Z-Tel Communications, Inc.
601 South Harbour Island Boulevard
Tampa, Florida 33602

Lawrence E. Harris
David S. Turetsky
Terri B. Natoli
Edward B. Krachmer
8065 Leesburg Pike - Suite 400
Vienna, Virginia 22182

Henry G. Hultquist
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW - Suite 701
Washington, DC 20006

Leon M. Kestenbaum
Jay Keithley
Richard Johnke
Sprint Corporation
401 9th Street, NW - 4th Floor
Washington, DC 20004

Russell Merbeth
Larry Walke
Winstar Communications, Inc.
1615 L Street, NW - Suite 1200
Washington, DC 20036

Richard Metzger, Vice President
Regulatory Affairs & Public Policy
Focal Communications Corporation
7799 Leesburg Pike - Suite 850 N
Falls Church, Virginia 22043

Gail L. Polivy
1850 M Street, NW - Suite 1200
Washington, DC 20036

Michael J. Shortley, III
180 South Clinton Avenue
Rochester, New York 14646

363735.1