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

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
	)	
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	CCB/CPD File No. 98-63

COMMENTS OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

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SUMMARY

McLeodUSA submits these comments to advocate three main points. First, the record does not clearly establish that regulation of CLEC access charges is needed, and the Commission, therefore, should proceed with caution in adopting any benchmark for CLEC interstate access charges. Second, to the extent that any benchmark approach is adopted for CLEC access charges, it should reflect the higher costs that CLECs incur in providing access service and provide an exemption for CLECs providing service to customers outside of defined metropolitan statistical areas. Lastly, any benchmark established for CLEC interstate access charges should not be based on rates established by the *CALLS Order*.

In order to establish benchmark regulation of CLEC interstate charges, or any other regulation of CLEC interstate access charges, the Commission must first justify the need for any such regulation. The current record in this proceeding provides little or no justification for regulation of CLEC interstate access charges, generally, or adoption of a benchmark. McLeodUSA, in fact, is unaware of any case in which the Commission has held that the interstate access rates of any particular CLEC, or CLECs as a group, are so excessive as to be unjust and unreasonable. Accordingly, the Commission should proceed with caution in adopting a benchmark approach for CLEC interstate access charges.

CLECs have cost characteristics that justifiably result in access rates that are higher than those of ILECs. The Commission, in fact, has noted that CLEC access rates may be "higher due to the CLECs' high start-up costs for building new networks, their small geographic service areas, and the limited number of subscribers over which CLECs can distribute costs." It is also widely recognized that there are in general, significant cost differences in the provision of telecommunications service in urban, highly populated areas versus rural, less populated areas. Accordingly, any benchmark established for CLEC access charges should reflect the higher costs

that CLECs incur in providing access service and should provide an exemption for CLECs providing service outside of the top 50 metropolitan statistical areas.

Any benchmark for CLEC access rates should not be based on rates established in the *CALLS Order*. As noted in petitions filed for reconsideration of the *CALLS Order*, the rate adjustments and rule changes contained in the *CALLS Order* are unlawful. Moreover, CLECs neither participated in, nor were CLEC rates the subject of, CALLS negotiations. Accordingly, application of CALLS rates to any benchmark for CLEC access rates under these circumstances would be totally inappropriate.

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COMMENTS OF
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), through counsel and pursuant to the Commission's December 7, 2000 request for additional information in the above-captioned proceeding,[1] hereby submits these comments concerning competitive local exchange carriers ("CLEC") charges associated with switched local exchange access service provided to interexchange carriers ("IXCs").

I. THE COMMISSION SHOULD EXERCISE CAUTION IN ADOPTING A BENCHMARK APPROACH FOR REGULATION OF CLEC INTERSTATE ACCESS CHARGES

In its *Public Notice*, the Commission solicits additional comment on whether and how to "reform" CLECs' tariffing of switched interstate access charges. Specifically, the Commission seeks comment on the issue of establishing a "benchmark" to govern CLEC interstate access

[1] *Common Carrier Bureau Seeks Additional Comment on Issues Relating to CLEC Access Charge Reform*, Public Notice, CC Docket No. 96-262, DA 00-2751 (released Dec. 7, 2000) ("*Public Notice*").

charges. Several commenters in this proceeding have advocated adopting a benchmark approach for CLEC access charges whereby charges at or below the benchmark would be presumed to be "just and reasonable."

A. The Record in this Proceeding Does Not Establish a Basis for Regulation of CLEC Interstate Access Charges

Adoption of a benchmark approach to govern CLEC interstate access charges raises several concerns. As the Commission has previously noted, CLECs do not possess market power in the provision of terminating access.[2] Incumbent LECs ("ILECs"), on the other hand, retain significant market power such that continued regulation of ILEC access charges is both warranted and needed to ensure that CLECs can effectively compete with ILECs. Overbroad and intrusive regulation of CLEC interstate access rates, however, would likely retard competition and undermine the purposes of the Communications Act of 1934, as amended ("Act"). In particular, requiring CLECs to conform their rate structure to comport with any benchmark established will be very burdensome to CLECs given the Commission's previous experience with benchmark regulation for cable television service.[3]

McLeodUSA also submits that establishment of a benchmark for CLEC access charges is particularly problematic given that the record in this proceeding has not substantiated a need for regulation of CLEC interstate access rates as a general proposition. In order to establish benchmark regulation of CLEC interstate access charges, or any other regulation of CLEC interstate access charges, the Commission must first justify the need for any such regulation.

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[2] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges,* Report and Order, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982 (1997) ("*Access Reform Order*").

[3] The Commission's most extensive experience with benchmark regulation was regulation of rates for cable service under the 1992 Cable Act. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation*, MM Docket No. 92-266, 8 FCC Rcd 5631 (1993). That experience shows that what was initially intended as a simplistic means of regulation turned about to be extremely complicated and burdensome.

The current record in the access charge proceeding provides little or no justification for regulation of CLEC interstate access charges. Specifically, McLeodUSA is unaware of any case in which the Commission has held that the interstate access rates of any particular CLEC, much less the rates of CLECs as a group, are so excessive as to be unjust and unreasonable.

The "issue" of the need for regulation of CLEC access charges was initially raised in a petition for declaratory ruling filed by AT&T.[4] In that petition, AT&T alleged that some access charges of CLECs are 20 times that of the incumbents with whom they compete. As the Association for Local Telecommunications Services ("ALTS") pointed out at the time, however, a substantial amount of the information submitted by AT&T in its petition was incorrect or misleading.[5] In actuality, there has been little, if any, public information put forth by IXCs demonstrating that CLEC access charges pose a significant problem that necessitates affirmative action by the Commission since the Commission first considered adoption of a "benchmark" to evaluate CLEC access charges.

In the last round of comments filed in this proceeding, however, Sprint submitted substantive information concerning CLEC access rates. Although that study concluded that the average CLEC per minute charge was approximately five times that of the competing incumbent

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[4] Petition for Declaratory Ruling in the Matter of Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CCB/CPD 98-63 (filed Oct. 13, 1998).

[5] CCB/CPD File No. 98-63, Reply Comments of the Association for Local Telecommunications Services (Dec. 7, 1998). In addition, ALTS recently filed a lengthy study by ICC Consulting that demonstrated that there is generally not a significant difference in the total access *charges* of the competitive carriers and the incumbents. CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, Reply Comments of the Association for Local Telecommunications Services, Attachment A, Integrated Communications Corporation, *Interstate Switched Access Charges, A National Survey: A Public Policy Analysis of Interstate Switched Access Charges, Including a Survey of 1,435 Incumbent Local Exchange Carrier Tariffed Rates*. ("ICC Report") (Oct. 29, 1999). In that proceeding the second largest IXC, MCI Worldcom (now Worldcom) concluded that there is no evidence that unreasonably high access charges are widespread. We understand that ALTS is filing an additional study in response to this Commission's most recent public notice that will demonstrate why the *costs* of the competitive industry may be different that the costs of the incumbents.

in the same area, the study failed to specifically identify competitive carriers whose charges were reviewed and did not compare the total access charges of the two sets of carriers. Rather, similar to the AT&T petition referenced above, the study filed by Sprint compared only the average charge per minute. Therefore, the Sprint study, like the AT&T study, was incomplete and inherently misleading.

The Commission's recent solicitation of information concerning access charges billed to various IXCs by CLECs further substantiates McLeodUSA's view that there is nothing in the record of this proceeding to support any determination that CLEC access charges on the whole are high or unreasonable.[6] While McLeodUSA has not had an opportunity to see or challenge recent submissions of IXCs, the information submitted by competitive carriers previously in this proceeding demonstrate that while there may be a few "outliers," CLEC access charges are generally reasonable.[7]

B. Any Benchmark Approach Established for CLEC Access Rates Must Ensure that IXCs Continue to Interconnect With CLECs and that CLECs Receive Compensation for the Provision of Access Service

Without conceding the argument that regulation of CLEC interstate access rates is unwarranted on the record established in this proceeding, McLeodUSA asserts that any benchmark approach adopted for CLEC interstate access rates must ensure that IXCs continue to fulfill their interconnection obligations as provided under the Act. Sections 201 and 251(a) of the Act impose an obligation on all common carriers to interconnect with each other. Specifically, Section 201 requires "every common carrier engaged in the interstate or foreign

[6] In the Public Notice released on December 9, 2000, the Commission stated that because they have received "relatively little evidence" to support either a charge that CLEC charges, in general, substantially exceed ILEC rates, or that in there is not a substantial difference in the rates, the Commission staff had requested that "certain IXCs submit, on an *ex parte basis*, information concerning the CLEC access charges for which they have been billed in the recent past."

[7] *See generally* ICC Report (discussing CLEC rates for access service).

communication...to establish physical connections with other carriers." Section 251(a) further states that "each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

Despite the explicit dictates of the Act, the incidence of interexchange carriers refusing to pay CLEC tariffed rates continues. AT&T, for example, has continually threatened to refuse to accept or terminate calls from or to certain local exchange carriers. A refusal on the part of IXCs to interconnect would not only violate the Act, but disserves the public interest because it endangers the rights of consumers to choose telecommunications service providers. Accordingly, McLeodUSA urges the Commission to include in any regulation or benchmark adopted for CLEC interstate rates an explicit requirement that IXCs may not refuse to interconnect with carriers for alleged claims of unreasonable access rates. Section 208 of the Act provides the appropriate remedy for carriers asserting unreasonableness in CLEC rates for interstate access service.

Any benchmark for CLEC interstate access rates should also provide explicit assurance for payment of CLEC access service. As the Commission is well aware, various IXCs have employed "self-help" mechanisms whereby they will withhold payment from carriers believed to charge excessive access service rates in strict violation of the requirements of the Act. To combat the unlawful "self-help" practices of IXCs, any benchmark approach adopted by the Commission should explicitly require that IXCs pay any CLEC rates at or below the established benchmark.

II. ANY BENCHMARK APPROACH ADOPTED FOR CLEC INTERSTATE CHARGES SHOULD REFLECT THE HIGHER COSTS THAT CLECS INCUR IN PROVIDING ACCESS SERVICE AND PROVIDE AN EXEMPTION FOR CLECS OPERATING OUTSIDE OF METROPOLITAN STATISTICAL AREAS

A. CLECs Have Cost Characteristics that May Result in Access Rates that are Higher than those of Incumbent LECs

Evidence submitted in this proceeding indicates that CLECs often face higher costs in the provision of access service than other local exchange carriers.[8] As discussed in further detail below, various factors contribute to the higher costs incurred by CLECs in providing access service:

- CLECs tend to experience lower levels of utilization for switching and transport facilities;
- Long distance traffic is significant cost factor for CLECs; and
- CLECs tend to serve a sparse customer base, and CLEC customers tend to be located at a greater distance from CLEC switching facilities.[9]

In light of these factors, McLeodUSA submits that any benchmark adopted for CLEC interstate access charges should reflect that CLECs generally incur higher costs in providing access service than ILECs.

Lower Utilization Rates for CLEC Facilities. CLECs incur substantial initial capital expenditures in connection with the construction of their telecommunications facilities. Unlike ILECs, who already have networks in place to provide service, CLECs do not restrict deployment and use of such facilities to their most populous areas. When constructing their networks, CLECs typically install enough equipment and capacity to accommodate present and

[8] CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, Comments of Allegiance Telecom, Inc. at pp. 12-16 (Oct. 29, 1999) ("Allegiance Comments"); Comments of Focal Communications Corporation and Hyperion Telecommunications, Inc. d/b/a Adelphia Business Solutions at pp. 17 (Oct. 29, 1999) ("Focal/Adelphia Comments"); Reply Comments of the Association for Local Telecommunications Services at pp. 6-12 (Oct. 29, 1999) ("ALTS Reply Comments").

[9] *See* ICC Report at pp. 8-11; *see also* Rural Task Force, *White Paper 2: The Rural Difference* (Jan. 2000) ("*White Paper 2*").

future demand. Therefore, when a CLEC network initially becomes operational, utilization of CLEC facilities is substantially below full capacity due to the limited number of customers possessed by new entrants.[10] Since CLECs incur significant start-up costs and tend to experience lower utilization rates for their facilities, CLECs will need higher access charges to offset the increased costs incurred in providing service.

Long Distance Traffic on CLEC Networks. Most of the traffic on CLECs' networks is off-net and long distance in nature. Accordingly, the CLECs' networks are designed to accommodate a larger percentage of long distance calls.[11] Most of the calls placed on ILECs' networks are local in nature. ILEC networks, therefore, are primarily designed to accommodate intra-office and interoffice on-net local calling.[12] Since long distance calls comprise a significant amount of traffic on CLECs' networks, CLECs will need to recover a higher percentage of access charges, relative to ILECs.

CLECs Customer Base and Distance of Customers from CLEC Switching Facilities. Another factor driving CLECs' access charges is the nature of their customer bases. Even when CLECs provide service in urban areas with high population densities, the typical CLEC customer base only comprises a fraction of the customer base of the ILEC serving the same area. Therefore, even CLEC customers in urban areas tend to be distributed at a density rate comparable to that of an ILEC that serves a suburban or rural area. It has been noted that "if the CLEC's customer base is expressed on a customer-per-square-mile basis, it is sparse relative to

[10] ICC Report at p. 8.
[11] *Id.* at p. 9.
[12] *Id.*

that of the urban LECs."[13] Thus, even in densely populated areas, CLEC customers tend to be located at considerable distances from the CLEC's serving central office.[14]

The Commission has unequivocally stated its intent to establish access charges that are more reflective of the actual costs of providing access service.[15] Accordingly, it is appropriate for the Commission to recognize the higher costs that CLECs incur in providing service, and allow for CLECs to recover these higher costs through higher rates for access service.

Interestingly, many commenters have stated that the cost structure that is most reflective of CLECs is that of smaller ILECs such as National Exchange Carrier Association ("NECA") companies and independents.[16] Specifically, it has been argued that both CLECs and smaller, rural ILECs serve a sparse customer base that is often at a great distance from their switching facilities. Commenters have also noted that both CLECs and smaller, rural ILECs may experience lower levels of switch utilization.[17] Based on these factors, some CLECs have even suggested that NECA rates might serve as a useful benchmark for CLEC access rates in urban areas.[18]

McLeodUSA asserts that if the applicable point of comparison for CLECs operating in urban areas are the rates charged by the NECA companies, then those CLECs operating in rural and other high-cost areas should be able to charge rates higher than the NECA rates. ILECs in

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[13] *Id.*
[14] *Id.*
[15] *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 for U.S. West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, and CC Docket No. 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, FCC 99-206, at p. 4 (Aug. 27, 1999) ("*Pricing Flexibility Order*").
[16] ICC Report at p. 11.
[17] *See* Focal/Adelphia Comments at p. 17.
[18] CC Docket No. 96-262, 94-1, Comments of MCI WorldCom at p. 21 (Oct. 1999).

rural areas will still enjoy advantages over CLECs providing service in those areas in terms of type and location of existing facilities, utilization rates, and capital resources.

B. Any Benchmark Approach to CLEC Access Charges Should Provide an "Exemption" for CLECs Providing Access Service to Customers Outside of the Top 50 MSAs

As discussed above, CLECs often face higher costs in the provision of access service than ILECs. The Commission, in fact, has noted that CLEC access rates may be "higher due to the CLECs' high start-up costs for building new networks, their small geographic service areas, and the limited number of subscribers over which CLECs can distribute costs."[19] It is also widely recognized that there are, in general, significant cost differences in the provision of telecommunications service in urban, highly populated areas versus rural, less populated areas.[20] Accordingly, the cost factors that contribute to higher CLEC access in urban areas are exacerbated for CLECs providing access service outside of metropolitan areas.

While McLeodUSA has general concerns about the adoption of a benchmark for CLEC interstate access charges, the application of a benchmark could be particularly harmful to competitive carriers providing service in rural and high cost areas. Therefore, should the Commission decide to create a benchmark for CLEC access charges, McLeodUSA urges the Commission to also provide an exemption for CLECs operating in areas that fall outside of the top 50 metropolitan statistical areas.

1. Advantages of Defining the Proposed Exemption in Terms of MSAs

The Commission and other parties have put forth a number of possible definitions of "rural" for the purposes of an exemption to any benchmark established for CLEC access charges. McLeodUSA suggests that the Commission allow for an exemption that applies to interstate

[19] *Access Charge Reform Order* at ¶ 244.
[20] *See White Paper 2.*

access charges with respect to any customer outside the top 50 Metropolitan Statistical Areas ("MSAs").[21] Defining any exemption created for CLECs access rates in terms of top MSAs is appropriate because of its simplicity and the ease in which it may be applied. Specifically, the MSA definition would be simple to administer in that it creates a bright line demarcation for any exemption created for CLEC interstate access charges. This definition would also prevent future disputes about application of the exemption to any particular CLEC.

The MSA definition is also appropriate because it would recognize that the factors that support higher-than-ILEC access charges generally will be accentuated in areas outside of major metropolitan areas. For example, because most CLEC facilities are located in the top 50 MSAs, it is in these areas that CLECs could be expected to have both higher utilization rates and customer density. The Commission has previously determined that most CLEC switches are located within a MSA.[22] In fact, 61% of all requesting carrier switches have been deployed in the top 50 MSAs and 96% of the top MSAs have four or more switches.[23] These are also the areas where most of the CLEC lines are located.[24] Accordingly, a rural exemption established for all CLECs operating outside of the top 50 MSAs would apply to those CLECs who are most likely to experience disproportionately high costs in providing access service - those CLECs operating outside of major metropolitan areas.

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[21] An MSA is made up of a county or group of contiguous counties surrounding a city with a population of 50,000 or more. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, at ¶ 279, fn. 551 (1999) ("UNE Remand Order").

[22] UNE Remand Order at ¶ 280.

[23] *Id.*

[24] *See,* UNE Remand Order, ¶ 281, fn. 557.

2. Shortcomings of Other Proposed Definitions for Any Rural Exemption for CLEC Access Charges

a.) Sprint Definition

Sprint proposes that rural areas be defined as areas outside of Metropolitan Statistical Areas. In order to qualify for the exemption under Sprint's proposed definition, however, CLECs must meet the following criteria: (i) CLEC may only operate in rural areas and would not qualify if it also offered service within an MSA; (ii) CLEC must compete with ILECs that offer service in both rural and non-rural areas of state; and (iii) CLEC must make its services available to all customers in its service area rather than limit such service to business customers or customers in towns within the area.[25]

Sprint, without providing any justification, seeks to limit use of the exemption to all but a small segment of CLECs, *i.e.*, those providing service exclusively in rural areas. CLECs operating in rural areas, however, experience higher costs in providing service regardless of whether the scope of their service extends to other areas. Accordingly, there is no basis to deny CLECs recovery of their costs simply because they also provide service in non-qualifying areas. Sprint's proposed definition would arbitrarily deny CLECs operating in rural areas the ability to recover their costs of providing access service within those areas.

CLECs who operate in both high cost and non-high cost areas would be effectively limited 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.[26] Instead, any carrier that provides service in an area eligible for the rural exemption should be entitled to the exemption for that area, even when it serves other areas.

[25] CC Docket No. 96-262, *Ex Parte Presentation of Sprint Corporation* at pp. 1-2 (Oct. 11, 2000)

[26] A constricted benchmark could unduly cramp the ability of CLECs to invest in network architecture. CC Docket Nos. 96-262 and 94-1, Reply Comments of Allegiance Telecom, Inc. at p. 8 ("*Allegiance Reply Comments*").

b.) RICA Definition

RICA would define a rural CLEC as: (1) 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 (2) a CLEC that provides telephone exchange service, including exchange access, to fewer than 50,000 access lines.[27]

RICA's definition is rooted in the traditional conception of a 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. While this may appropriate for ILECs or independent telephone companies, it is not applicable for CLECs, which:

> [t]ypically 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..[28]

Since the CLEC switch will most likely be located within the MSA, the MSA approach would be most consistent with the CLECs' costs for switched access. For CLECs, the determinative cost factor driving access rates is not whether a customer is located within a town of 20,000 or more, but instead whether the customer is outside of a major metropolitan area. If the customer is outside of the major metropolitan area, the CLEC's costs of providing access service will be higher because the CLEC switch will likely be within the metropolitan area.

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

A strict population density approach is also problematic in that there is no magic population figure where costs of providing service increase. The RICA survey indicates 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 incurred by CLECs in providing access service, therefore, will not automatically decrease when the town line is crossed.

A definition based on access lines is also deficient because it would arbitrarily exclude 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 does not have the ability that larger ILECs have to offset these costs from other sources. If these CLECs are prevented from recovering the higher cost of providing access service, the CLECs will be effectively precluded from entering these markets, thereby denying customers in these markets of the opportunity to partake in a broad range of competitive services.

c. Statutory Definition

It has also been suggested that any definition of a rural exemption for CLEC access charges should be based on the definition provided in the Act, which 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

[28] ICC Report at p. 5.

than 15% of its access line in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.[29]

The criteria identified in the statutory definition of a rural carrier bear little, if any, relationship to the costs incurred by CLECs in providing switched local exchange access service. The intent of this definition, instead, was related to other areas of regulation of ILECs, such as defining which ILECs are subject to interconnection, resale, and unbundling requirements of the Act. Therefore, the Commission should not adopt the statutory definition of rural carriers to define any exemption to benchmark regulation adopted for CLEC access rates.

III. THE COMMISSION SHOULD NOT USE RATES ESTABLISHED IN THE *CALLS ORDER* IN DEVELOPING A BENCHMARK FOR CLEC INTERSTATE ACCESS CHARGES

In its *Public Notice*, the Commission also seeks information on how CLEC access rates compare to ILEC access rates, particularly in light of changes to ILEC rates established pursuant to the *CALLS Order*.[30] This comparison is premised on the view that price cap ILEC rates established under the *CALLS Order* are lawful. McLeodUSA submits that the rate adjustments and rule changes adopted in the *CALLS Order* are unlawful for all the reasons raised by ALTS and other parties in their petitions for reconsideration of the *CALLS Order*.[31] Accordingly, the Commission should not establish any benchmark governing CLEC interstate charges based on any of the rates contained in the *CALLS Order*.

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[29] 47 U.S.C. § 154(37).

[30] *Public Notice* at ¶ 8. *See also Access Charge Reform*, Sixth Report and Order, CC Docket No. 96-262, 15 FCC Rcd 12962 (2000) ("*CALLS Order*").

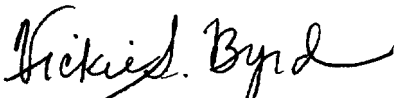
[31] CC Docket Nos. 96-262 and 94-1, Petition for Reconsideration of Focal Communications Corporation and The Association for Local Telecommunications Services (July 21, 2000). The rate adjustments and rule changes adopted in the *CALLS Order* are unlawful because: (i) they are inherently arbitrary, *e.g.*, using the X-Factor for non-productivity purposes, and the size of the new universal service fund; (ii) the Commission assumption that the CALLS rate adjustments and rule changes reflect an industry consensus was erroneous in light of the fact that there was widespread industry opposition to the CALLS proposal; and (iii) the Commission did not adopt procedures for adjusting price cap rates based on industry negotiations instead of price cap rules.

The *CALLS Order* is also an inappropriate basis for any benchmark established for CLEC access rates in that ILEC-negotiated rates are not readily applicable to CLECs. In the *CALLS Order*, the Commission adjusted capped rates of interstate access charge of the price cap ILECs and amended its access charge and price cap rules based on negotiations between some ILECs and IXCs. CLECs neither participated in, nor were CLEC rates the subject of, CALLS negotiations. Under these circumstances, apart from the lawfulness of CALLS rates, application of CALLS rates to any benchmark for CLEC access rates under these circumstances would be totally inappropriate.

IV. CONCLUSION

For foregoing these reasons, McLeodUSA urges the Commission to exercise caution in adopting a benchmark approach for regulation of CLEC interstate access charges. To the extent that the Commission seeks to regulate CLEC access rates through a benchmark approach, the Commission should consider the higher costs CLECs incur in providing service and also create an exemption for CLECs providing access service outside of the defined metropolitan statistical areas. McLeodUSA also submits that the Commission should not use any rates established in the *CALLS Order* as a basis for regulation of CLEC access charges.

Respectfully submitted,



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January 11, 2001

CERTIFICATE OF SERVICE

I, Anya Fletcher do hereby certify that on this 11th day of January, 2001 the foregoing Comments of McLeod USA Telecommunications Services, Inc. was delivered by hand and first class mail to the following:

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