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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
	)	
Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers	)	CC Docket No. 97-146

JOINT REPLY COMMENTS OF
E.SPIRE COMMUNICATIONS, INC., KMC TELECOM, INC.,
TALK.COM HOLDING CORP., AND XO COMMUNICATIONS, INC.

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I. INTRODUCTION AND SUMMARY

e.spire Communications, Inc., KMC Telecom, Talk.com Holding Corp., and XO Communications, Inc. (collectively, the "Joint Commenters"), by their attorneys, hereby submit the following Reply Comments in response to the Commission's Notice in the above captioned proceeding.[1] As leading providers of telecommunications service in markets across the nation, the Joint Commenters have a direct and vital interest in the outcome of this proceeding.

In these Reply Comments, the Joint Commenters join a number of commenters in echoing support for the Guaranteed Reduced Exchange Access Tariffs ("GREAT") Proposal described in the comments submitted by the Association for Local Telecommunications Services ("ALTS"). The Joint Commenters strongly urge the Commission to adopt the GREAT Proposal as submitted.

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[1] *Common Carrier Bureau Seeks Additional Comment on Issues relating to CLEC Access Charge Reform*, DA 00-2751 (rel. Dec. 7, 2000).

Besides ameliorating regulatory and competitive burdens, adoption of the GREAT Proposal will provide a number of benefits to the industry. Establishment of a benchmark would, on a going-forward basis, moot IXC claims that CLEC access rates are unreasonable, and allow CLECs' capital resources, now being consumed by collection litigation against IXCs, to be instead directed to the continued implementation of business plans that bring consumer choice to Americans in the fashion contemplated by Congress when it passed the Telecommunications Act of 1996.

Moreover, in these Reply Comments the Joint Commenters support the proposed rural exemption. The Joint Commenters agree that in order to protect CLECs operating in rural or high cost areas from the imposition of rates that fail to reflect the real costs of providing service in these areas, the Commission should carve out an exemption for rural carriers.[2] Finally, the Joint Commenters encourage the Commission to consolidate for consideration the Petitions for Declaratory Ruling filed by Sprint and AT&T on January 19, 2001 into the Access Charge Reform proceeding. The issues raised in the Sprint and AT&T Petitions are directly tied to the issues under consideration in this proceeding.

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[2] *See* Bayring Communications and Lightship Telecom, LLC ("Bayring") Comments at 11; CTSI, Inc. and Madison River Communications ("CTSI") Comments at 11; Focal Communications Corp., RCN Telecom Services, Inc., and Winstar Communications, Inc. ("Focal") Comments at 25; McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") Comments at 9; Minnesota CLEC Consortium ("MCC") Comments at 2; National Telephone Cooperative Association ("NTCA") Comments at 6; Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") Comments at 4; Rural Independent Competitive Alliance ("RICA") Comments at 6; and TDS Metrocom, Inc. ("TDS") Comments at 5.

II. THE COMMISSION SHOULD ADOPT THE GREAT PROPOSAL SUBMITTED BY ALTS

The record of this proceeding demonstrates widespread implicit and explicit support for the GREAT Proposal. A number of comments recognize that the entire industry can benefit from the establishment of benchmark access rates that are deemed reasonable by the Commission.[3] Carriers are in general agreement that establishing and enforcing benchmark rates for CLEC access charges would give assurance that CLEC access rates are reasonable. Further, carriers recognize that creation of a benchmark, commensurate with continued application of a permissive detariffing regime, would not impose significant regulatory burdens on CLECs.

The GREAT Proposal provides a regulatory framework which can be implemented easily by the Commission and which addresses the pitfalls inherent under a mandatory detariffing regime. Specifically, the Joint Commenters submit that establishment of a presumptively reasonable "benchmark" CLEC access rate and maintenance of the permissive detariffing regime now in place will ensure the reasonableness of CLEC access charges while simultaneously avoiding the creation of significant regulatory burdens for CLECs or the Commission. As a number of commenters noted, prescription of mandatory detariffing of CLEC access charges, regardless of their level, would place competitive carriers at a substantial disadvantage relative to ILECs and IXCs, in that ILECs would continue to have the ability to bind IXCs with filed tariffs, while similarly situated CLECs would have to negotiate access contracts with hundreds of IXCs in order to provide the same types of service. By forcing CLECs to incur negotiation costs not incurred by incumbents, mandatory detariffing raises a barrier to entry in local exchange markets.

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[3] *See* OPASTCO Comments at 3; RICA Comments at 4; and Z-Tel Comments at 4.

Further, as ALTS, Eschelon, Z-Tel and several other commenters noted in their initial comments, the access rates of ILECs and CLECs are not readily comparable, primarily because ILECs and CLECs do not necessarily employ the same rate structures and face vastly different costs and economies of scale.[4] As the record shows, CLECs often have higher access costs because of the substantial up-front investment in facilities and network infrastructure that is required to compete with the ILEC. These costs are typically spread over a lower traffic volume than that of an ILEC, since CLECs usually serve smaller geographic regions and fewer customers. Finally, while the ILECs have operated for decades under an effectively guaranteed rate of return with a captive ratepayer base, CLECs must compete for customers, and are capitalized by debt and equity markets. The GREAT Proposal takes into consideration these circumstances, and as a result, concludes that a difference in the access rates charged by CLECs and ILECs is not only reasonable but is necessary.[5]

A number of commenters catalogued their problems with IXCs that are refusing to pay selected CLECs for terminating access services they have received because the tariffed rates for these services are alleged to be unreasonable.[6] The Joint Commenters submit that establishment of benchmark tariffed rates for CLEC access will obviate the need to continue litigating the issue of the "reasonableness" of access rates and would provide greater assurance to CLECs that they will get paid for services rendered. Under the GREAT Proposal, as long as the

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4 *See* ALTS Comments at 8-9; Bayring Comments at 8-10; Eschelon Comments at 3-4; and Z-Tel Comments at 8-9.

5 *See* Bayring Comments at 12; CTSI Comments at 6; Focal Comments at 21; Eschelon Telecom Inc. ("Eschelon") Comments at 3; McLeodUSA Comments at 6; MCC Comments at 3; NTCA Comments at 5; TDS Comments at 5; and Z-Tel Comments at 8.

6 *See* MCC Comments at 2; RICA Comments at 4; OPASTCO Comments at 3; and United States Telecom Association ("USTA") Comments at 4.

CLEC access rate is at or below the established benchmark, the carrier's rate would be presumed reasonable under Section 201 of the Act.

The Joint Commenters share the frustration of the numerous other commenters in this proceeding who are being forced into bringing protracted litigation against IXCs who, in direct contravention of the Commission's rules, are utilizing self-help measures in order to challenge the presumptively reasonable access rates established by CLECs.[7] Commensurate with its adoption of the GREAT Proposal, the Joint Commenters urge the Commission to utilize this opportunity to reaffirm its longstanding policy that carriers may not use self-help to resolve rate disputes.

III. THE RECORD SUPPORTS CREATION OF A RURAL EXEMPTION

In establishing a benchmark approach to the regulation of CLEC access charges, the Joint Commenters agree that the Commission should establish an "exemption" for CLECs providing access service in rural areas. Although the Joint Commenters decline to support any one of the competing proposals put forth by McLeod, the Minnesota CLEC Consortium, RICA, or Sprint, the Joint Commenters agree that the adoption of an exemption for CLECs operating in rural and high cost areas is a necessary component of access reform.[8] As a number of carriers indicate, the differences in costs of providing service and the vast differences in economies of scale result in CLECs serving rural areas to be faced with higher operating costs than ILECs

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7 *See* Bayring Comments at 4; CTSI Comments at 4, Focal Comments at 11; McLeodUSA Comments at 5; MCC Comments at 3; RICA Comments at 3; and USTA Comments at 3.

8 *See* Bayring Comments at 11; CTSI Comments at 11; Focal Comments at 25; McLeodUSA Comments at 9; MCC Comments at 2; NTCA Comments at 6; OPASTCO Comments at 4; RICA Comments at 5; and TDS Comments at 5.

operating in the same area, and therefore give rise to justifiably higher rates.[9] It is clear that even as CLECs in general face higher costs, rural CLECs are subject to even greater financial challenges with an even smaller customer base over which to distribute those costs.[10] The Joint Commenters agree that the financial realities faced by rural carriers make necessary the creation of a rural exemption that recognizes these fiscal realities.

IV. THE COMMISSION SHOULD CONSOLIDATE INTO ITS ACCESS CHARGE REFORM PROCEEDING THE PETITIONS FOR DECLARATORY RULING FILED BY AT&T AND SPRINT

On January 5, 2001 the presiding judge in the collection actions brought by a number of CLECs who have had access payments illegally withheld by AT&T and Sprint[11] granted Sprint's motion and referred to the Commission for resolution two questions: (1) whether any statutory or regulatory constraints prevent an IXC from terminating or declining services ordered or constructively ordered, and if not, (2) what steps IXCs must take in order to avoid ordering or to cancel service after it has been ordered or constructively ordered.[12] On January 19, 2001 AT&T and Sprint each filed a Petition for Declaratory Ruling asking the Commission to address these questions. The Joint Commenters submit that the Commission should consolidate consideration of AT&T and Sprint's Petitions into its ongoing *Access Charge*

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9 *See* Bayring Comments at 12; CTSI Comments at 6; Eschelon Comments at 3; Focal Comments at 22; McLeodUSA Comments at 6; MCC Comments at 2; NTCA Comments at 6; TDS Comments at 5; and Z-Tel Comments at 8.

10 *See* Bayring Comments at 13; CTSI Comments at 10; Eschelon Comments at 3; Focal Comments at 25; McLeodUSA Comments at 9; MCC Comments at 3; NTCA Comments at 4; and RICA Comments at 5.

11 *Advamtel, LLC v. AT&T Corp.*, Civil Action 00-643-A (E.D. Va. filed Apr. 17, 2000); *Advamtel, LLC v. Sprint Communications Co. L.P.*, Civil Action 00-1074-A (E.D. Va. filed Apr. 17, 2000).

12 *See* Order, *Advamtel, LLC v. AT&T Corp.*, Civil Action 00-643-A (Jan. 5, 2001); Order, *Advamtel, LLC v. Sprint Communications Co. L.P.*, Civil Action 00-1074-A (Jan. 5, 2001).

Reform proceeding in light of the fact that the issues on which AT&T and Sprint are seeking Commission ruling are the exact questions already being addressed in this docket. Indeed, in its *Further Notice of Proposed Rulemaking* the Commission sought comment on unresolved issues arising out of the case of *MGC Communications v. AT&T Corp.*,[13] including (1) whether any statutory or regulatory constraints prevent an IXC from declining a CLEC's access service; (2) if there are circumstances in which an IXC may decline to purchase a CLEC's access service, what are the ramifications for the customer of the CLEC; and (3) whether such a regime is consistent with the goals of section 254 of the Act.[14]

Because the issues raised in the Petitions mirror those being addressed in this proceeding, the Commission's scarce resources would be more efficiently expended by considering issues raised in the Petitions in the instant docket. Doing so would afford the Commission the ability to build on the already extensive record in this proceeding as it revisits issues that have been under consideration by the Commission and the industry for almost two and one half years. Accordingly, the Joint Commenters urge the Commission to consolidate consideration of the AT&T and Sprint Petitions for Declaratory Ruling into the *Access Charge Reform* docket in order to respond fully to the myriad issues raised in the FNPRM and the Sprint and AT&T Petitions.

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13 See *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd. 11647 (Comm. Car. Bur. rel. July 16, 1999)

14 *See In the Matter of Access Charge Reform et al.*, CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, 98-157, *Further Notice of Proposed Rulemaking*, FCC 99-206, ¶ 242 (rel. Aug. 27, 1999).

V. CONCLUSION

As discussed herein, the Commission should adopt the GREAT Proposal, establishing a "benchmark rate" standard for CLEC access rates and confirming that IXCs may not utilize self-help measures against CLECs as a means of challenging access rates. Also, the Commission should establish a rural exemption for CLECs operating in high cost areas. Finally, the Petitions for Declaratory Ruling filed by Sprint and AT&T should be consolidated and the issues raised therein addressed by the Commission in this proceeding.

Respectfully Submitted,

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January 26, 2001

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CERTIFICATE OF SERVICE

I, Charles M. Hines III, hereby certify that a true and correct copy of the foregoing **"Joint Reply Comments of e.spire Communications, Inc., KMC Telecom, Inc., Talk.com Holding Corp., and XO Communications, Inc.; CC Docket Nos. 96-262 & 97-146"** was delivered by courier service this 26th day of January, 2001 to the individuals on the following list:

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