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January 26, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**VIA COURIER**

Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

Re: *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, CC Docket Nos. 96-262 and 94-1, and CCB/CPD File No. 98-63*

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's December 7, 2000 Public Notice Requesting Comments are an original, and eight paper copies, of the Reply Comments of BayRing Communications.

Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,



Harisha J. Bastiampillai

Enclosures

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

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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

**REPLY COMMENTS OF  
BAYRING COMMUNICATIONS**

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## SUMMARY

Congress in enacting, and this Commission in implementing, the Telecommunications Act of 1996, did not envision that the competitive telecommunications market that Act seeks to engender would only develop within the confines of major metropolitan areas such as New York City and Boston. The hope was, and remains, that competition will spread into rural and other underserved, high-cost areas of the country. CLECs such as BayRing, driven by the promise of the Act, have invested substantially in deploying networks in such areas, and have brought a full array of competitive telecommunications services to many areas that were previously lucky to have one provider offering the most basic of service.

It is vital to the continued deployment of competitive telecommunications service in these rural and high-cost areas that CLECs be allowed to recover their costs of providing service over their network. The record of this proceeding has demonstrated that access service is a significant cost-driver for CLECs, particularly in rural areas. CLECs, who already face higher costs vis-à-vis ILECs in providing access service, find these costs exacerbated in rural areas. Major IXCs would have CLECs “grin and bear it” in regard to these costs, but such an approach is not consistent with current access charge regulation, and would competitively disadvantage CLECs. The Commission has allowed ILECs providing service in these areas to recoup the higher costs of providing access service either through use of averaged access rates by larger ILECs or higher access charges coupled with USF subsidies for smaller ILECs. If the Commission were to deny CLECs an exemption to recover their higher costs, these CLECs would not be able to compete effectively in such areas, and the promise of competition found in the Act would be lost.

It is also important that the Commission adopt a definition of the rural exemption that is consistent with the manner in which CLECs incur costs. The record of this proceeding

demonstrates that the higher costs CLECs face in providing access service are fueled by costs that arise out of the distributed nature of CLEC network architecture. The definition for the rural exemption suggested by BayRing reflects the nature of the CLEC networks, and the way in which CLECs incur these costs. Given the Commission's stated goal to make an access charge system that is "economically rational," it is important that the Commission's definition of the rural exemption be economically rational as well, and reflect the cost-causation and cost-recovery principles of the Commission. BayRing proposes that the exemption should apply to any access service provided to a subscriber located outside the density zone 1 of the top 50 MSAs. This definition is appropriate because of its simplicity and ease of application, and because it is most reflective of the factors contributing to development of access charges of CLECs.

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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

**REPLY COMMENTS OF  
BAYRING COMMUNICATIONS**

BayRing Communications (“BayRing”) submits these reply comments in response to the Commission’s request in the Public Notice dated December 7, 2000.

**I. THE NEED FOR A RURAL EXEMPTION**

While many of the commenters in this proceeding echo the conclusion that Congress and this Commission have already reached, *i.e.*, that carriers providing service in rural areas face higher costs,<sup>1</sup> the major IXC’s argue that CLECs should not be allowed to recoup these higher costs through a rural exemption to any benchmark that this Commission may establish for CLEC access charges. Under the formulation of IXC’s such as WorldCom, CLECs such as BayRing operating in rural areas of New England would be allowed to charge access rates only slightly higher than Verizon charges in downtown Manhattan. The IXC arguments against the rural

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<sup>1</sup> See CC Docket No. 96-262, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies at p. 2 (January 10, 2001)(“*OPASTCO Comments*”); CC Docket No. 96-262, Additional Comments of the Rural Independent Competitive Alliance at p. 5 (January 11, 2001)(“*RICA Comments*”).

exemption differ, and will be addressed specifically below, but they all suffer from the same myopic characterization of the costs that carriers face in providing service to such markets.

It is without dispute that one of the goals of the Commission is to encourage competitors to enter high-cost areas.<sup>2</sup> Rural CLECs have been making tremendous strides in bringing competitive telecommunications services to underserved markets.<sup>3</sup> BayRing was the first CLEC licensed in Maine and New Hampshire. It is a full service facilities-based telephone company providing a full range of Internet, local dial tone, long distance voice, and data communication services to rural areas. Such competitive provisioning of services should be encouraged, but denying CLECs their costs of providing service in these areas will imperil the development of competition in these areas.

For instance, CLECs operating outside of major metropolitan areas frequently compete against carriers charging unitary switched access rates based on the average cost of providing service in both metropolitan and rural areas. Thus, these carriers operating only in smaller markets are unable to subsidize the costs incurred in providing switched access services in small markets with revenues derived from large urban areas. For this reason, the averaged rates of an ILEC in whose territory a CLEC competes may be not validly be applied to govern the rates of a CLEC that does not also average rates to the same extent as the ILEC.

**A. Response to Sprint**

Sprint argues that it fails to “see any substance to this argument.”<sup>4</sup> Sprint argues that no one forces CLECs to enter such markets, and that “if a CLEC cannot expect to attain a cost structure that offsets the scale and scope economies of its principal competitor, and is unwilling

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<sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00J-4, ¶ 11 (Dec. 22, 2000).

<sup>3</sup> *RICA Comments* at p. 1.

<sup>4</sup> CC Docket No. 96-262, Comments of Sprint Corporation at p. 3 (January 11, 2001)(“*Sprint Comments*”).

to absorb start-up losses until it attains such a cost structure, it should not enter the market.”<sup>5</sup> Sprint’s argument, in effect, suggests that a CLEC should not enter the market unless its plan is to “cherry-pick” the most densely populated areas served by the ILEC. Followed to its logical conclusion, Sprint’s argument would leave the more sparsely populated areas devoid of competition.

CLECs serving less densely populated areas are not seeking preferential treatment in this market. CLECs are merely seeking to be treated equally under the regulatory regime in regard to their access charges. For instance, the large ILEC providing service in this market is allowed to offset the higher cost of providing access service in high-cost areas through averaged access rates.<sup>6</sup> Thus, the additional access revenue a large ILEC generates in urban areas essentially finances its provision of service in rural areas. Large ILECs like Verizon can absorb the higher costs of providing access service in higher cost areas in New Hampshire and Maine because of the substantial access revenues they will generate in metropolitan areas such as New York City and Boston. A small ILEC operating in the same rural area would also have cost recovery advantages because not only would it partake of the higher NECA access rates, it would have universal service subsidies to tap into. The average ILEC participating in NECA’s tariffs receives \$5.57 per month per access line in explicit universal service subsidies to compensate it for higher loop costs.<sup>7</sup> The Rural Independent Competitive Alliance (“RICA”) conducted a survey of its rural CLEC members and found that only 29% of its members receive USF

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<sup>5</sup> *Id.* at p. 3.

<sup>6</sup> *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 ¶ 58 (August 27, 1999)(“*Pricing Flexibility Order*”).

<sup>7</sup> CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, Reply Comments of the Association for Local Telecommunications Services at p. 11 (October 29, 1999)(“ALTS Reply Comments”).

subsidies so rural CLECs are clearly much more dependent on access charges to recover the costs of their facilities.<sup>8</sup>

Sprint's position would create the anomalous situation that both the large ILEC and the small ILEC would enjoy effective "subsidies" in the provision of access service in these rural markets, while the CLEC would not. Such a situation would make it virtually impossible for the CLECs to enter such markets, much less effectively compete in them. Thus, it is not a question of a CLEC requesting preferential treatment, the CLEC is merely seeking to be treated on a level playing field with other carriers.

Sprint also makes the unsupported supposition that "it is far from clear that the statewide-averaged access charges of an ILEC would be below the efficient costs of a rural CLEC in any case."<sup>9</sup> Sprint argues that CLECs operating in rural areas would aim their offerings at the most profitable customers having a large number of lines and large calling volumes.<sup>10</sup> Sprint's argument ignores the findings made in the RICA survey. This survey showed that the rural CLECs surveyed serve nearly three times as many residential lines as business lines, that their service areas cover a wide range of population densities, and that they are serving markets that larger carriers still deem as undesirable.<sup>11</sup> BayRing provides service both to business customers and to residential customers as well. Most of its customers have a limited number of lines. So far from limiting themselves to the choicest customers, CLECs in rural areas are bringing a full array of services to a broad spectrum of customers.

The reality is in rural areas, CLECs face higher costs regardless of how big a customer is or how high their call volume is. Sprint ignores the fact that it has been demonstrated that CLEC

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<sup>8</sup> CC Docket No. 96-262, Summary of *Ex Parte Meeting of Rural Independent Competitive Alliance*, Member Survey Report at p. 9 ("RICA Report").

<sup>9</sup> *Sprint Comments* at p. 3-4.

<sup>10</sup> *Id.*

access costs are higher than price cap ILECs, and that the situation is exacerbated in rural areas.<sup>12</sup> There is no way that the costs of CLECs providing access service in these rural areas could approximate the averaged price cap ILEC access rates, much less be lower than those rates.

**B. Response to WorldCom**

WorldCom is guilty of the same fallacious reasoning. It contends that a CLEC that offers service in a rural area might or might not have higher costs than a CLEC that operates in a more urban area, so it argues that there should be no rural exemption.<sup>13</sup> WorldCom suggests that the rural CLEC may have larger end users and may also have higher switch utilization. These suppositions do not conform with the realities of the marketplace, however. CLECs operating in rural areas, where there will be an even smaller pool of customers from which the CLECs can draw to recover the costs of these facilities, can typically be expected to have lower utilization rates than CLECs operating in urban areas.<sup>14</sup> CLECs operating in rural areas will likely have customers that are located at even larger distances from their switches,<sup>15</sup> and will incur higher transport costs to service these customers.

Both Sprint and WorldCom's reasoning would also counsel against allowing small ILECs operating in rural areas to charge higher access rates than larger ILECs operating in urban areas, because their "costs" could possibly be lower than their urban counterparts. WorldCom admits that it is not basing its arguments on any information as to CLEC costs generally, or on the

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<sup>11</sup> RICA Report at pp. 1-5.

<sup>12</sup> CC Docket Nos. 96-262 and 94-1 and CCB/CPD File No. 98-63, Comments of BayRing Communications and Lightship Telecom, LLC at pp. 17-21 (January 11, 2001)(*"Initial Comments"*).

<sup>13</sup> CC Docket No. 96-262, Further Comments of WorldCom, Inc. at p. 6 (January 11, 2001)(*"WorldCom Comments"*).

<sup>14</sup> For instance, "because Rural Carriers, on average, have substantially fewer lines per switch than non-RTC, they cannot benefit from economies of density as well as their large counterparts." Rural Task Force, *White Paper 2: The Rural Difference* at p. 44 (January 2000)(*"White Paper 2"*).

<sup>15</sup> Rural carriers generally utilize longer loops and have higher operating expenses per customer. *White Paper 2* at p. 43.

particular costs of CLECs in rural areas, and argues that such information is not needed.<sup>16</sup> CLECs have, however, demonstrated how CLEC costs for providing access service in general are higher than ILEC costs, and this disparity is even more pronounced in rural areas.<sup>17</sup> The case has been made for the rural exemption and the IXCs have offered no evidence to support their opposition to such an exemption.

### C. Response to AT&T

AT&T argues that a rural exemption would be “antithetical to the objectives of the Telecommunications Act of 1996 and unnecessary in light of other recent action to protect universal service in high-cost rural areas.”<sup>18</sup> As has been noted in this proceeding, however, “under the non-rural universal service support mechanism, high-cost areas in most states are ineligible to receive federal universal service support.”<sup>19</sup> As RICA explains:

Most RICA member rural CLECs are competing in areas served by non-rural ILECs. Universal service support for any particular line served by the CLEC is, by operation of Section 54.307, equal to the support received for that line by the ILEC. Although the area served by the CLEC may actually be a high cost to serve area, the non-rural ILEC may receive no support for the lines because the state average cost is low, or because the cascade process allocated its support to higher cost exchanges. Because the ETC designation process involves expense and delay, rural CLECs will generally not request designation if there is no support available.<sup>20</sup>

This observation is corroborated by OPASTCO which notes:

Under the non-rural universal service support mechanism, the forward-looking costs of providing supported services for non-rural carriers in each state are averaged and compared to a national cost benchmark. If the non-rural companies' statewide average cost of providing the supported services is lower than the national cost benchmark, then (absent any interim hold-harmless support) none of the non-rural study areas in that state receive any support, even the high cost areas

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<sup>16</sup> *WorldCom Comments* at p. 7.

<sup>17</sup> *Initial Comments* at pp. 17-21.

<sup>18</sup> CC Docket No. 96-262, AT&T Additional Comments at p. 12 (January 11, 2001)(“*AT&T Comments*”).

<sup>19</sup> *OPASTCO Comments* at p. 7.

<sup>20</sup> *RICA Comments* at p. 12.

that may exceed the national cost benchmark. For this reason, some CLECs that are serving rural and high-cost service areas may choose not to pursue eligible telecommunications carrier status because they recognize that no support is available in the non-rural company study areas in the state they are providing service. Therefore, using the receipt of universal service support as a basis or prerequisite for qualifying for a higher rural benchmark rate would exclude many CLECs providing service in rural and high-cost markets and should not be adopted.<sup>21</sup>

The universal service mechanism established by the *CALLS Order* is also irrelevant to the issue at hand. That mechanism sought to replace the implicit subsidies for non-traffic sensitive local loop and port costs that had been provided through traffic-sensitive per minute charges such as the PICC.<sup>22</sup> A significant portion of the CLEC costs in providing access service are traffic-sensitive costs, such as transport costs as opposed to loop costs.<sup>23</sup> These costs would not be covered by universal service subsidies, but are rather properly recovered through switched access charges. Thus, the *CALLS* universal support mechanism would not provide adequate support to CLECs.

Accordingly, the record in this proceeding has demonstrated that the Commission should establish a rural exemption to any benchmark applied to CLEC access charges.

## II. THE DEFINITION OF THE RURAL EXEMPTION

Most of the comments in regard to how a rural exemption should be defined focus on the definitions proffered by Sprint and RICA. OPASTCO does offer its own definition, but it is basically RICA's definition with the threshold being areas/towns with a population of 40,000 or

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<sup>21</sup> *OPASTCO Comments* at p. 8.

<sup>22</sup> *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193, at ¶ 189 (May 31, 2000) ("*CALLS Order*").

<sup>23</sup> 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* at p. 10 ("ICC Report") (October 29, 1999).

fewer as opposed to 20,000 or fewer.<sup>24</sup> While Sprint maintains it fails to see a basis for a rural exemption it does adhere to the “limited exception” it proffered earlier in the proceeding.<sup>25</sup>

BayRing maintains that the definition it offered in its *Initial Comments*, *i.e.*, that the exemption should apply to any access service provided to a subscriber located outside the density zone 1 of the top 50 MSAs.<sup>26</sup> This definition is appropriate because of its simplicity and ease of application, and because it is most reflective of the factors contributing to development of access charges of CLECs.<sup>27</sup> This Commission has emphasized its goal of making cost recovery for access service reflective of cost causation principles.<sup>28</sup> BayRing demonstrated how its definition is most in tune with how CLECs incur higher costs for providing access service in rural and other high cost areas.<sup>29</sup>

The problem with the RICA/OPASTCO approach is that it is more rooted in the traditional conception of a network architecture, *i.e.*, that customers in towns within urban areas or towns of 20,000 or more inhabitants would be close to a LEC’s serving wire center. BayRing noted how this may be the case for ILECs or independent telephone companies, but not for CLEC networks.<sup>30</sup> RICA and OPASTCO provide no justification for how they determined the respective population densities they chose. For instance, there may be two towns located equidistant from a CLEC switch with the same number of CLEC customers, but one town may come within the exemption merely because its population is 20,000 as opposed to 25,000. RICA and OPASTCO fail to demonstrate how their definition is reflective of cost-causation principles. BayRing demonstrated that its definition tracks the network architecture of CLECs and reflects

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<sup>24</sup> *OPASTCO Comments* at p. 5-6.  
<sup>25</sup> *Sprint Comments* at p. 4-5.  
<sup>26</sup> *Initial Comments* at p. 21.  
<sup>27</sup> *Initial Comments* at pp. 21-22.  
<sup>28</sup> *CALLS Order* at ¶ 12.  
<sup>29</sup> *Initial Comments* at pp. 21-22.  
<sup>30</sup> *Initial Comments* at p. 24.

how they incur costs.<sup>31</sup> BayRing's definition offers the same administrative simplicity that the RICA/OPASTCO definitions do while being more consistent with the cost-causation principles advocated by the Commission.

RICA argues that at populations below 20,000 there is a lack of "critical mass" and fewer low cost/high volume customers are to be expected.<sup>32</sup> RICA does not explain, however, what this nebulous "critical mass" is, nor why there are proportionally fewer low cost customers in such towns. RICA's real motivation seems to be revealed when it notes that "it is also a measurement of the areas that are least attractive to the majority of the CLEC industry that is not affiliated with rural ILECs."<sup>33</sup> No justification is given, however, for why an affiliation with a rural ILEC should be a prerequisite for the exemption, and no such justification can be given that would be true to the principles of cost recovery that govern access charge regulation.

Sprint applies a metropolitan statistical area approach ("MSA"), but its exceptions virtually swallow the exemption. It precludes use of the exemption by any CLEC that operates within a MSA, but offers no reason why such CLECs should be denied recovery of the higher costs of providing access service in rural areas. For instance, CLECs like BayRing that primarily serve smaller markets, but may have some limited presence within a MSA, would be unable to qualify for the exemption. This would occur despite the higher costs they face for providing access service in such smaller markets and their inability to offset these costs through averaged access rates given their limited presence in urban areas.

Sprint would also set the rural exemption rate as the average NECA rate. It has been demonstrated, however, that the average NECA rate is more reflective of the costs of CLECs

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<sup>31</sup> *Initial Comments* at p. 22.

<sup>32</sup> *RICA Comments* at p. 11.

<sup>33</sup> *Id.*

operating in urban areas.<sup>34</sup> 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.

As the Commission embarks on its mission of making the access charge compensation system more “economically rational,” it should not arbitrarily define critical concepts such as the rural exemption based on the subjective musings of affected parties. Instead, the Commission should evaluate and determine which approach is most consistent with cost-causation and cost-recovery principles. BayRing posits that its definition is the one most in accord with such principles.

### **III. CONCLUSION**

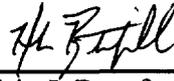
BayRing urges the Commission to allow for a rural exemption to any benchmark it may set for CLEC access charges. Failure to provide such an exemption would competitively disadvantage CLECs operating in rural areas vis-à-vis ILECs operating in such areas on a subsidized basis, and would impede introduction of competitive telecommunications services in such areas. There is ample support in the record of this proceeding for such an exemption. The Commission should also define eligibility for this exemption in a manner consistent with the

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<sup>34</sup> CC Docket No. 96-262, 94-1, Comments of MCI WorldCom at p. 21 (Oct. 1999).

principles it is trying to achieve in regard to charges for access service. The definition proffered by BayRing promotes such principles and should form the basis for the rural exemption.

Respectfully submitted,



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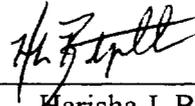
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January 26, 2001

**CERTIFICATE OF SERVICE**

I, Harisha J. Bastiampillai do hereby certify that on this 26<sup>th</sup> day of January, 2001 the foregoing Reply Comments of BayRing Communications. was delivered by hand and first class mail to the following:



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