

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

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In the Matter of

Access Charge Reform

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) CC Docket No. 96-262

ADDITIONAL REPLY COMMENTS OF THE
RURAL INDEPENDENT COMPETITIVE ALLIANCE

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SUMMARY

Despite the Commission's clear ruling that CLEC access rates higher than the ILEC's access rate are not unjust and unreasonable, AT&T and Sprint continue to assert the contrary and avail themselves of "self-help" by refusing to pay the lawful tariffed CLEC access charges. Rural CLECs who have been competitively disadvantaged and financially injured by the illegal actions of these IXCs have come to the FCC for relief in the form of an Emergency Petition. However, after almost a year after the Emergency Petition was filed, no action from the Commission has been forthcoming. As a result, rural CLECs have ceased to expand their efficient, reliable and modern telecommunications services to other rural communities.

RICA agrees with the many commenters in this proceeding who assert that market solutions are preferable to regulation, but unfortunately, due to the "self-help" actions of the large IXCs, a benchmark approach to CLEC access rates is necessary. This approach must contain a separate, or a "rural exemption" due to the higher costs incurred when serving rural areas. Many agree that the NECA rate is a reasonable benchmark for such an exemption. Sprint's economic argument, if followed, would perpetuate rural areas receiving poor quality service from large IXCs rather than encourage the provision of efficient, reliable and modern telecommunications services that are being offered by rural CLECs.

RICA has provided the Commission with a definition of a "rural exemption" that ensures that CLECs operating in rural areas are able to provide quality telecommunications services to areas traditionally poorly served by the large ILEC. Accordingly, for the advancement of the public interest, RICA urges the Commission to promptly adopt RICA's proposal for a "rural exemption" and emphatically declare the obligations of IXCs to interconnect with all CLECs.

communities and has quashed CLECs' plans for expansion into other rural areas. Therefore, to ensure that rural CLECs are able to survive and grow, the Commission must adopt a benchmark methodology to establish presumptively reasonable access rates together with a clear statement of the obligations of IXCs to interconnect with all CLECs. While alternative regulatory solutions could be developed, the benchmark has the advantage of avoiding large numbers of individual rate proceedings. As previously noted by RICA, and as demonstrated by comments submitted in response to the Commission's instant request, commenters in this proceeding support a benchmark approach for CLEC access rates.²

B. Commenters Agree with RICA that a Rural Exemption is Necessary Due to the Higher Costs Incurred When Serving Rural Areas

In its Comments, RICA urged the Commission to adopt a benchmark methodology for rural CLECs that is reflective of the higher costs that rural CLECs incur. Many commenters provided further evidence in the record that rural CLECs incur higher costs and agreed with RICA's conclusion that a separate benchmark for rural CLECs is needed.³ The Guaranteed Reduced Exchange Access Tariffs ("GREAT") proposal submitted by ALTS and supported by several commenters⁴ recognizes the need for a separate benchmark for CLECs serving "high-

²See Reply Comments of RICA filed November 29, 1999 at 6-7; Z-Tel Comments at 2.

³ See, e.g., NTCA's Comments at 4; OPASTCO' Comments at 4. Worldcom argued that there should only be a single, nationwide benchmark and recommended that the Commission adopt as the single benchmark the proposal that it worked out with ALTS. However, as noted below, rather than state a single rate for all CLECs, the ALTS proposal allows for a separate "tiers." Thus, it is not clear what Worldcom recommends as the single benchmark.

⁴See, e.g., ASCENT's Comments at 5; E.Spire et. al. Comments at 2.

cost markets.⁵ RICA does not oppose the GREAT proposal in its attempts to provide a benchmark rate for non-rural CLECs, but urges that the RICA proposal also be adopted to provide an appropriate benchmark for “rural CLECs” as defined by RICA in its comments.

C. Commenters Agree that the NECA Rate is Appropriate as a Benchmark

In its Comments, RICA agreed with Sprint’s proposal that the average NECA rate is a reasonable rate for a benchmark for rural CLECs.⁶ The reasonableness of the NECA rate is supported by comments that cite Worldcom’s statement made in previous comments in this proceeding that the NECA rate might prove a useful benchmark for urban CLECs.⁷ As noted in RICA’s Comments, although most RICA members have priced their access service using the same rates as their affiliated ILECs, *i.e.*, using the NECA rates, the costs of the CLECs may

⁵ Under ALTS’ proposal, the benchmark in “Tier I” markets would initially be 2.5 cents per minute and would decline by 0.2 cents each year. In “Tier II” markets, *i.e.*, markets served by rural ILECs, the benchmark would be the ILEC’s tariffed interstate access rate. For CLECs serving “Tier III” and/or “Tier IV” markets, *i.e.*, high-cost markets, served by “Tier I” ILECs, ALTS recommended that the Commission consider exempting these CLECs from any mandatory detariffing requirements, or in the alternative, consider adopting a higher permissive detariffing ceiling rate coupled with a significantly slower phase down period.

⁶ Should the Commission adopt “access reform” regulations, such as is proposed in the Petition for Rulemaking submitted by the Multi-Association Group (“MAG”) (*see Notice of Proposed Rulemaking*, CC Docket 00-256 (rel. Jan. 5, 2001)) which shift a substantial portion of the NECA pool members’ costs from access to a CALLS-like universal support mechanism under Section 254, RICA believes that the benchmark should continue to be set at the level of the average NECA rate plus the amount received by the average NECA member through such support mechanism.

⁷*See e.g.*, Focal Communications et. al. Comments at 25; McLeodUSA Comments at 8. The Commenters posited that in light of Worldcom’s statement, a benchmark for rural CLECs should be higher. Worldcom most recently has stated its support for the ALTS proposal as “a good faith attempt to reach a compromise among competing interests.” *See* Worldcom’s Comments at 5. *See also* RICA’s Reply Comments filed on November 29, 1999 at 6-7 (citing commenters in this proceeding that supported use of the NECA rate as a benchmark for urban and rural CLECs).

actually be somewhat higher due to the newer, less depreciated outside plant and other factors. However, RICA recommends that the Commission adopt the average NECA rate as a benchmark for rural CLECs to avoid the considerable expense as well as the necessity of developing a prescribed accounting, separations and tariff element rules for CLECs.⁸

II. IXCs' Objections to a Rural Exemption are Baseless

A. AT&T Fails to Prove that Access Charges for Rural CLECs are Unreasonable

AT&T claims that a rural exemption would “improperly support operations of a class of CLECs in some as-yet-undefined ‘rural’ areas through subsidies that are implicit in tariffed access rates that are higher than those of the ILEC operating in the same geographic service territory.” Further, AT&T argues that the exemption would “inequitably place the burden of funding these CLECs’ subsidies in rural areas solely upon those carriers’ access customers (including, in particular, IXCs such as AT&T that serve large numbers of end users in non-urban regions).” AT&T recommends instead that the high-cost can be subsidized by portable USF available from passage of CALLS.⁹

AT&T’s argument is based upon the false assumption that rural CLEC rates are unreasonable and “supracompetitive.” As noted above, however, most RICA members have priced their access service using the NECA rates because the cost characteristics are similar to

⁸RICA Comments at 15.

⁹See AT&T Comments at 12-13 (noting that in light of the fact that the \$650 million new USF provided in the CALLS Order is portable to competing ETCs, “there is simply no justification for the Commission now to create an additional support mechanism through a ‘rural exemption’ exclusively for CLEC access rates”).

their ILEC operations, except that, in many cases, their CLEC costs are higher due to newer, less depreciated plant. As demonstrated in RICA's Comments, costs for rural CLECs are typically higher on a per-unit basis than incumbent access rates because the costs are spread over a smaller customer base with much lower average density and lower business to residence ratio.¹⁰ Rates rationally designed to recover costs of providing service do not involve "implicit" subsidy just because they are higher than some other carriers rates based on a different set of costs.

Therefore, rather than being a "subsidy" that is available to rural CLECs and not to ILECs serving the same territory, the access charges are higher due to the higher costs incurred by small, rural telecommunications companies.¹¹

Additionally, AT&T is incorrect in its assumption that the amount of funds available to rural CLECs through CALLS can adequately replace the loss of revenue that would be realized if rural CLECs charged the same rates as the ILECs serving the same territory. In many cases, the amount of portable USF available from CALLS is either non-existent or not substantial and, in

¹⁰See RICA's Comments at 5. *See also*, NTCA's Comments at 4 (noting that carriers in rural areas must face challenges such as "extreme loop lengths, harsh terrain and lower population densities" and that overcoming these challenges translates into higher costs of providing service); OPASTCO's Comments at 4 ("[i]t follows then, that when a carrier charging NECA rates pursues an 'edge out' strategy as a CLEC into a neighboring service area, the cost characteristics are often going to be similar").

¹¹ In its Comments, Worldcom argues that some circumstances might exist where a rural CLEC's cost of providing access service might be lower than its urban counterpart and yet it would receive the exemption while the urban counterpart would not. *See* Worldcom's Comments at 6-7. Although in some circumstances, the rural CLEC's cost of providing access service may be lower, in other circumstances, rural CLECs with costs above the NECA average rate will receive less, and sometimes substantially less, revenue than a similarly situated rural ILEC because the NECA rates are based on the average cost of all pool members. Also, under RICA's proposal, only a presumption of reasonableness is established. Thus that the rates could be challenged in a complaint brought under Section 208.

many cases, it is not practical for rural CLECs to become ETCs.¹²

B. Sprint's Economic Argument Demonstrates the Need for a Rural Exemption

Sprint argues that there is no economic need for a rural exemption to benchmarked rates because, it claims, "in a multi-carrier market, no single carrier is entitled to recover its costs." No CLEC should enter a market, says Sprint, where it cannot "attain a cost structure that offsets the scale and scope economies of its principal competitor." A rural exemption, therefore, would merely promote inefficient entry according to Sprint. This is all very nice economic theory, but as RICA has shown, the unquestionable result of following this prescription is that there will be no alternative carriers to remedy the historical relegation to second or third class status of rural areas served by the large companies. Rural CLECs, therefore, perform a unique role, but one that cannot continue if AT&T and Sprint are permitted to use "self-help" to dictate how much access revenue rural CLECs should receive. If the Commission actually accepts Sprint's philosophy, it should say so promptly, so that the owners of Rural CLECs can find better uses for their time and capital.

If it really is national policy, however, that all areas of the country should receive high quality and advanced communications service, then establishing rules by which rural CLECs can recover their legitimate costs is the most efficient and least regulatory approach available. The inadequate service in the rural areas served by the large, non-rural ILECs is a testament to the inability of regulators over a long period to compel adequate service levels.

¹² See RICA's Comments at 12.

As RICA pointed out in testimony to the Joint-Board, a Rural Telephone Company can respond to the pleas of its neighbors for improved service by either buying exchanges from the large ILEC, or competing with it by overbuilding. Although many rural areas have benefited from sales of exchanges to locally owned and controlled carriers, the net cost to society of overbuilding will often be lower than purchase and rebuilding. Because of the strategic location of the large company's rural exchanges with respect to the rural company, the large companies have been able to achieve sale prices substantially in excess of the value of the plant. Because the plant is usually obsolete, the purchasing company then is faced with substantial additional investment if it is to fulfill its promises of service improvement. The CLEC, however, can avoid the inflated purchase expense and concentrate its investment dollars on building improved plant. To the extent the Commission fails to bring a halt to the self-help practices of AT&T and Sprint, the CLEC option will cease to exist and the less efficient purchase option will be the only means of improving service in many rural areas. It will, however, reward the sellers with revenues far above their net investment.

It should be noted that when Rural Telephone Companies purchase exchanges from large ILECs, the access rates charged by the Rural Telephone Company purchaser are usually the NECA rates. Yet, when a Rural Telephone Company determines that overbuilding is the more efficient option and charges NECA rates, the IXCs claim that the rates are excessive because they exceed those of the large ILEC that is serving the same territory.

Sprint also complains that rural CLECs will not really improve service for any but the most desirable customers and so will not have higher costs than the ILEC. There are two faults with this argument. First, whatever the practices of the industry generally, the rural CLECs

belonging to RICA have demonstrated a commitment to serving both business and residence customers. Second, it is a myth that high volume, low cost to serve customers exist in the typical rural areas served by RICA members. To the contrary, the small size of the communities and lack of any large business means that achieving economies of scale comparable to the ILEC is simply impossible.

In attempting to demonstrate that there is no economic need for a rural exemption, Sprint argued that it did not offset its high start-up costs by charging its customers more than AT&T for competing service. It is noteworthy that Sprint was a major beneficiary of the discounts established by the Commission's ENFIA order when it was in a start-up mode.¹³

The potential effects of the AT&T and Sprint "self-help" programs are not speculative. With their revenue stream interrupted and the future unsure, rural CLECs have been forced to curtail their expansion to the detriment of rural customers. As demonstrated by RICA's Comments and NTCA's Comments,¹⁴ small ILECs have now ceased plans to expand their quality services to other rural areas due to the "self-help" actions on the part of the IXCs and the Commission's failure to take action. Therefore, without a rural exemption, CLECs will not enter rural markets. Thus, there will be no improvement in service if the Commission's adhered to Sprint's line of argument.

¹³ See *In the Matter of Exchange Network Facilities for Interstate Access (ENFIA)*, 71 FCC 2d 440 (1979).

¹⁴ See RICA Comments at 17; NTCA's Comments at 5.

III. IXCs' Criticisms of RICA's Proposal Have No Merit

A. IXCs' Criticism Regarding Alternative No Longer Relevant

RICA's original proposal included a provision mirroring Section 3(37)(B) of the Communications Act which would have provided an alternative eligibility for CLECs with less than 50,000 access lines. Sprint criticized RICA's alternative definition as it would allow a CLEC to gain a healthy market share in a medium-size city while still qualifying as a rural CLEC and noted that under this definition a holding company could operate in urban areas nationwide through separate subsidiaries, each of which would still be 'rural' under this definition.¹⁵ Worldcom also criticizes this aspect of RICA's original proposal by stating that no justification of the two exemptions can be made. As stated in RICA's Comments, RICA has withdrawn this alternative from its proposal. Accordingly, these criticisms are no longer valid.

B. No Evidence that Rural Exemption will Encourage "Gaming"

AT&T argues that a rural exemption would create strong incentives for "unscrupulous carriers to 'game' that mechanism to extract exorbitant charges from IXCs" and notes as an example "chat lines" that stimulate large volumes of traffic.¹⁶ Sprint argues that RICA's definition would allow a CLEC serving both urban and rural areas to defeat the purpose of a rural exemption and become a "rural CLEC" merely by creating a separate subsidiary or affiliate to serve the rural portions of its service area.¹⁷

¹⁵ Sprint's Comments at 5 - 6.

¹⁶ See AT&T's Comments at 14.

¹⁷ See Sprint's Comments at 5.

Contrary to AT&T's and Sprint's arguments, RICA's proposed definition would prevent "gaming" in that it would require that service be made available to all customers in its service area. As stated in its Comments, the proposed definition of a "rural CLEC" would only apply "to the extent that" a rural CLEC meets the population definition. Thus, only areas that have a population of less than 20,000, which includes areas that have been traditionally poorly served by the large ILECs, will receive the exemption.¹⁸

C. Proposal's August 10, 1993 Cut-Off Date Can Be Modified

Sprint criticizes RICA's definition in that it provides no reason for the August 10, 1993 cut-off for determining which areas are "urbanized."¹⁹ RICA's proposed definition follows Section 153(37) of the Communications Act and thus contains the August 10, 1993 cut-off. However, the advantage of this date is only that it follows the Act. Some other date could be determined if the Census Bureau revises its determinations.

IV. Data Provided by IXC's Does Not Prove that a Rural Exemption is Not Necessary

In response to the Commission's request, AT&T, Sprint and Worldcom present various data regarding CLEC access charges. However, in presenting their data, the IXCs do not differentiate between CLECs that serve urban areas and those that serve rural areas. Accordingly, the data presented does not support their arguments that rural CLECs have unreasonable or "supracompetitive" rates. Further, RICA agrees with the observations of Z-Tel

¹⁸RICA notes that to prevent the types of "gaming" such as "chat lines," carriers may file a Section 208 complaint and urges the Commission to promptly address such complaints.

¹⁹See Sprint's Comments at 5.

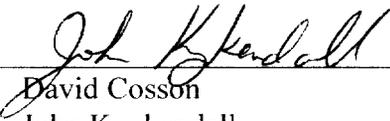
that simply comparing ILEC and CLEC access charges is inappropriate.²⁰

V. Conclusion

The Commission's instant request for additional comments in its access charge reform proceeding regarding a "rural exemption" provides the Commission with its best opportunity, and possibly last chance, to ensure that rural CLECs continue to provide efficient, reliable and modern services and once again consider expanding their services into other rural areas. RICA has provided the Commission with a definition of a "rural exemption" that ensures that a CLEC operating in a rural area is able to provide quality telecommunications services to areas traditionally poorly served by the large ILEC. Accordingly, for the advancement of the public interest, RICA urges the Commission to promptly adopt RICA's proposal for a "rural exemption" and emphatically declare the obligations of IXCs to interconnect with all CLECs.

Respectfully submitted,

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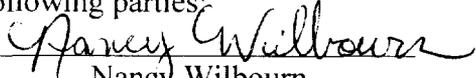
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²⁰ Z-Tel's Comments at 8. *See also* Worldcom at 7 ("[t]he Commission simply does not have reliable information on CLECs costs generally, or the particular costs of CLECs that operate in rural areas. Nor does it need such information")

CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Rural Independent Competitive Alliance" was served on this 26th day of January 2001, via hand delivery or by first class, U.S. mail, postage prepaid to the following parties:


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