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THE OFFICE OF IVAN C. EVILSIZER
ATTORNEY AT LAW
2033 ELEVENTH AVENUE, SUITE #7
HELENA, MONTANA 59601-4875
(406) 442-7115
Fax: (406) 442-2317
E-Mail: Evilsizer2@aol.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 20, 2001

Via Hand Delivery

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

Mr. Richard Lerner
Deputy Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S. W., 5-A221
Washington, D.C. 20554

Re: Written Ex Parte Presentation / Request for Clarification
CC Docket Nos. 96-45, 96-98, 98-77, 98-166, and 99-68

Dear Ms. Salas and Mr. Lerner:

Ronan Telephone Company ("Ronan"), by its undersigned attorney, requests that the Commission issue a letter or other appropriate document clarifying the discussion of the "symmetry rule" in the Commission's 1996 Interconnection Order.[1] The symmetry rule is codified at 47 CFR 51.711.

Confusion has arisen over whether paragraph 1088 of the 1996 Interconnection Order exempts from application of the symmetry rule those small rural carriers holding the "rural exemption" created by 47 U.S.C. Sec. 251(f)(1). Ronan requests clarification that the symmetry rules does not apply to carriers holding the Section 251(f)(1) rural exemption.

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List A B C D E

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC.Rcd. 15499 (1996) ("1996 Interconnection Order"). The symmetry rule is not at issue in the ongoing judicial review proceedings.

Threshold Issue

There is one threshold issue relating to the clarification request – whether the symmetry rule applies at all outside the context of an arbitration under Section 252 of the 1996 Act. In adopting its rules for pricing transport and termination of local telecommunications, including the symmetry rule, the Commission stated it was implementing the transport and termination pricing standard set out in Section 252(d)(2), a provision which pursuant to Section 252(c)(2) appears to apply only in arbitration cases.[2] In Ronan's case, currently before the Montana Public Service Commission (Montana PSC Docket No. D2000.1.14), the terms and conditions for transport and termination of local traffic will be set via a pending contested tariff proceeding rather than in arbitration proceedings under Section 252.[3] If the symmetry rule does not apply outside the arbitration context, then it would not apply to Ronan, regardless of the proper interpretation of paragraph 1088. Accordingly, Ronan requests clarification on this threshold issue.

Description of Symmetry Rule

In an arbitration proceeding, the symmetry rule comes into play when a state commission sets the rates charged by an incumbent LEC and the interconnecting carrier for transporting and terminating each other's local calls. The rule mandates, with limited exceptions, that the state commission consider only the incumbent LEC's costs.[4] By considering only one carrier's costs, the state commission necessarily sets only one "symmetric" rate to be charged both by the incumbent LEC and the interconnecting carrier.

The interconnecting carrier can opt out of the symmetry rule by choosing to present a study of its owns costs, but the incumbent LEC has no such option.[5] Unless the interconnecting carrier selects this option, the state commission must disregard any evidence that the incumbent's cost of transporting and terminating calls is higher than the interconnecting carrier's, as a state commission might reasonably find to be the case when the incumbent serves a large rural area and the CLEC serves a few high volume business customers near an existing wire center or other source of transport services. This scenario is especially egregious in the Ronan situation, where the interconnecting carrier is a heavily subsidized, lightly taxed, unregulated cooperative.

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[2] In paragraph 1046 of the *1996 Interconnection Order*, the Commission introduced the subject of pricing transport and termination of local traffic by stating that "in this NPRM, we sought comment on how to interpret Section 252(d)(2) of the Act."

[3] *Petition of Blackfoot Telephone Cooperative, Inc. for Arbitration of Contract Negotiations with Ronan Telephone Company, Inc. Order Dismissing Arbitrations and Closing Dockets*, Utility Division Docket No. D99.4.112, D99.4.113, Orders No. 6218a and 6219a (Mont. Pub. Ser. Comm., Jan. 26, 2000).

[4] 47 CFR Sec. 51.711(a). The rule does not apply to paging traffic. 47 CFR Sec. 51.711(c). Other limited exceptions are in 47 CFR 51.711(b).

[5] 47 CFR Sec. 51.711(b).

Specific Language in the 1996 Interconnection Order.

The 1996 Interconnection Order explained the symmetry rule and then discussed whether it should apply to small carriers. The Commission refused to exempt all smaller carriers from the rule because it felt the rule could be reasonably applied to at least some small carriers -- see italicized language below. However, the Commission acknowledged the burden the rule would impose in some cases and so (in Ronan's view) determined that the rule would not apply to those small carriers that still hold the rural exemption under Section 251(f)(1) of the 1996 Act or have obtained a "rural suspension" under Section 251(f)(2) of the Act -- see underlined language below:

> 1088. Symmetrical compensation rates are also administratively easier to derive and manage than asymmetrical rates based on the costs of the respective carriers. ... We have considered the economic impact of our rules in this section on small incumbent LECs. ... *We find, however, that incumbent LEC's costs, including small incumbent LEC's costs, serve as reasonable proxies for other carriers' cost of transport and termination for the purposes of reciprocal compensation.* We also note that certain small incumbent LECs are not subject to our rules under Section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from state commissions from our rules under section 251(f)(2) of the 1996 Act ....

Thus, it appears that the symmetry rule applies to those small carriers that (a) have seen their Section 251(f)(1) exemption lifted by a state commission or (b) have too many lines to qualify for the Section 251(f)(1)exemption, but are still small in comparison to the major local exchange carriers.[6] Ronan continues to hold the Section 251(f)(1) exemption. Ronan requests clarification that its interpretation of paragraph 1088 is correct, and that Section 251(f)(1) exempts rural carriers like Ronan from the symmetry rule (47 C.F.R. Sec. 51.711).

Attached to this letter is a letter from the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) publicly supporting Ronan in seeking this clarification of paragraph 1088. OPASTCO's letter states that the requested clarification of paragraph 1088:

> is particularly important in sparsely populated rural areas, where the cost to provide rural universal service greatly exceed the costs incurred by a new entrant to serve only a few selected lucrative large customers.[7]

Also attached is a letter from the Ronan Telephone Company Consumer Advisory Council (an independent consumer advisory organization), which makes the same point and supports it with a map showing the geographic distribution of subscribers in Ronan's service area.

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[6] A small carrier not holding the Section 251(f)(1) exemption would be subject to the symmetry rule unless it obtains a suspension order from a State Commission pursuant to Section 251(f)(2).

[7] Attached OPASTCO Letter of January 17, 2001 at 2.

Simply put, there will be some cases in which it may not be fair to require a small rural carrier to transport and terminate calls all over a far flung rural territory for the same price that a CLEC charges to transport and terminate calls to a few large business customers in the low-cost easy-to-reach locations. The FCC should clarify that state commissions have the flexibility to consider the costs of both carriers and take appropriate action in setting transport and termination rates.

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Ronan appreciates the time Commission staff have devoted to the issues raised in this letter. Please do not hesitate to call if we can be of assistance.

This letter is being filed as a written *ex parte* presentation in CC Docket Nos. 96-45, 96-98, 98-77, 98-166, and 99-68.

Sincerely yours,

Ivan Evilsizer /JHL

Ivan (Chuck) Evilsizer
Attorney for Ronan Telephone Company

cc: Jay Wilson Preston
James U. Troup
James H. Lister

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OPASTCO

ORGANIZATION
FOR THE PROMOTIO
AND ADVANCEMENT
OF SMALL
TELECOMMUNICATIO
COMPANIES

January 17, 2001

Jay Wilson Preston
President
Ronan Telephone Company
312 Main St. SW
Ronan, Montana 59864

RE: OPASTCO Support to seek FCC Staff Opinion

Dear Mr. Preston:

This letter is to confirm the affirmative vote of the OPASTCO Board of Directors at the meeting on January 13, 2001, to support you in seeking an informal staff opinion from the FCC clarifying the meaning of Paragraph 1088 of the 1996 FCC Interconnection Order (96-325). The OPASTCO Board concurs with you that a clarification of the rural exemption's applicability to the symmetry rule will benefit rural ratepayers.

Specifically, Paragraph 1088 of Order 96-325 gives the FCC's reasons for adopting a strong presumption in favor of symmetrical reciprocal compensation arrangements for some LECs (47 CFR Sec. 51.711, and generally Sections 51.701-51.717). Paragraph 1088 also states:

> 1088. . . . We also note that <u>certain small incumbent LECs are not subject to our rules under Section 251(f)(1) of the Act</u>, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from state commissions from our rules under section 251(f)(2) of the 1996 Act . . . . FCC Order 96-325, Paragraph 1088 (emphasis added)

The Board agrees that an informal FCC staff opinion is appropriate to confirm that this language was intended to clarify that rural LECs (those with the 251(f)(1) exemption) are exempt from the symmetry presumptions in 51.711. This clarification is necessary to ensure the proper application of Section 252(d)(2) of the Telecommunications Act; namely, to determine the appropriate and mutually compensatory local reciprocal compensation rates for local interconnection.

21 Dupont Circle, NW
Suite 700
Washington, DC 20036
202.659.5990
Fax 202.659.4619
http://www.opastco.org

This is particularly important in sparsely populated rural areas, where the costs to provide rural universal service greatly exceed the costs incurred by a new entrant to serve only a few selected lucrative large customers. Where rural competition develops, it is vital to strictly apply the clear language of Section 252(d)(2)[1] to assure the protection of affordable rates for the vast majority of rural consumers that are very unlikely to be served by the new entrant.

The FCC should affirm that state commissions must equitably exercise their discretion on a case by case basis in applying Section 252(d)(2) to rural competitive situations when setting reciprocal compensation rates. This is necessary to protect the vast majority of rural ratepayers (including, for example, the Native American population in your exchanges, particularly those families with low incomes) from rate increases caused by unfair competition and cherry-picking, and to discourage inefficient, subsidized, cream-skimming that is contrary to the public interest.

This issue is important to the OPASTCO membership, and is consistent with the comments filed by OPASTCO in 1996 (filed jointly as a member of the Rural Telephone Coalition) prior to the issuance of Order 96-325. You are hereby authorized to present this letter of support from OPASTCO to the FCC and to communicate OPASTCO's support when you request an informal FCC staff opinion to confirm that the 251(f)(1) rural exemption exempts rural telephone companies from 47 CFR§51.711.

Sincerely,

Robert T. Miles
Chairman
OPASTCO

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[1] "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; . . ." 47 U.S.C. Sec. 252(d)(2) (emphasis added)

Ronan Telephone Company Consumer Advisory Committee
P.O. Box 61
Roan, Montana 59864

Corwin "Corky" Clairmont, Chair
Bonnie Mueller, Vice Chair
Linda West
Alvin Sloan
Tom Trickell
Phyllis Houle
Bill Koberg

February 15, 2001

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S. W., 8-B201
Washington, D.C. 20554

The Honorable Susan Ness
Federal Communications Commission
445 Twelfth Street, S. W., 8-B115
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth
Federal Communications Commission
445 Twelfth Street, S. W., 8-A302
Washington, D.C. 20554

The Honorable Gloria Tristani
Federal Communications Commission
445 Twelfth Street, S. W., 8-C302
Washington, D.C. 20554

RE: Written Ex Parte Presentation/Request for Clarification
CC Docket Nos. 96-45, 96-98, 98-77, 98-166, and 99-68

Ronan Telephone Company, Ronan, Montana
Telecommunications Reciprocal Compensation Symmetry Rule, 47 C.F.R. 51.711

Dear Chairman Powell and Commissioners Ness, Furchtgott-Roth and Tristani:

The Ronan Telephone Company Consumer Advisory Committee is an independent community based organization that meets periodically to review and discuss telecommunications issues affecting our community. Ronan is located in a sparsely populated rural area in Northwest Montana, and is located on the Flathead Indian Reservation. The Flathead Reservation is the home of the Confederated Salish and Kootenai Tribes. The residents here are mostly modest to low income families. We try to represent fairly the resident's concerns when advising the Ronan Telephone Company (RTC) on pertinent consumer issues. In the recent past, we have filed comments and testified before the Montana Public Service Commission.

Our Committee recently met and discussed the symmetry rule (47 C.F.R. §51.711) in the context of rural competition. Specifically, we believe that it is not appropriate that all reciprocal compensation rates should be the same. It is necessary and in the consumer's best interest that a state Commission be given flexibility and discretion to implement reciprocal compensation arrangements which are appropriate and consistent with the plain language of the Act.[1]

A meeting was held at the FCC offices with Ronan Telephone Company, on January 19, 2001 to request an informal staff opinion regarding the exemption of rural telephone companies from the FCC symmetry rule (47 C.F.R. Sec. 51.711). We are writing to express our support for the request. We have reviewed this issue and strongly believe that such a ruling is consistent with the Telecommunications Act, in the best interests of rural consumers, and necessary to protect universal service.

Specifically, an exemption from the presumption of symmetrical reciprocal compensation rates is necessary to assure the appropriate application of Section 252(d)(2), allowing state Commissions to determine "each carrier's costs" individually and exercise their discretion case by case; and to protect against inappropriate cherry picking of rural company customers to the detriment of the remaining rural ratepayers (See Illustration I - Map of RTC Study Area). Such a ruling is appropriate and consistent with your explanation in Paragraph 1088 of Order No. 96-325 (the August, 1996 Local Competition Order, published at 11 FCC.Rcd. 15499). It is our understanding that this paragraph of your 1996 order was intended to hold the rural telephone companies exempt from the symmetry rule.

RTC is a test case for the appropriate application of the pro-competition and universal service protection provisions of the Act, as rural wireline competition develops. Not only do we support the informal staff opinion requested by RTC, it is also supported by the Organization for the Protection and Advancement of Small Telecommunications Companies (OPASTCO).[2] OPASTCO is the national trade association of independent small rural telephone companies. OPASTCO has recognized that forcing symmetrical reciprocal compensation rates in rural areas (where the costs of an incumbent and a new entrant are unlikely to be similar) will ultimately cause rural telephone rates to escalate as apparent subsidized rural cherry picking occurs.

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[1] 47 U.S.C. §252(d)(2) which requires rates to be based on "each carrier's costs".

[2] Letter from OPASTCO Chairman, Robert Miles, to the Ronan Telephone Co. President, Jay Wilson Preston, dated January 17, 2001.

In summary, the Ronan Telephone Consumer Advisory Committee joins Ronan Telephone Company and the Organization for the Protection and Advancement of Small Telephone Companies in requesting an informal staff opinion, clarifying that rural companies, which hold the Section 251(f)(1) rural exemption, are exempt from rule 51.711. We would appreciate it if a staff opinion could be issued timely to clarify this issue.

Sincerely,

Corwin "Corky" Clairmont, Chairman
Ronan Telephone Company Consumer Advisory Committee

cc: Senator Max Baucus
Senator Conrad Burn
Congressman Dennis Rehberg
Ms. Magalie Roman Salas, Secretary, Federal Communications Commission

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RONAN TELEPHONE SERVICE AREA - RONAN MT
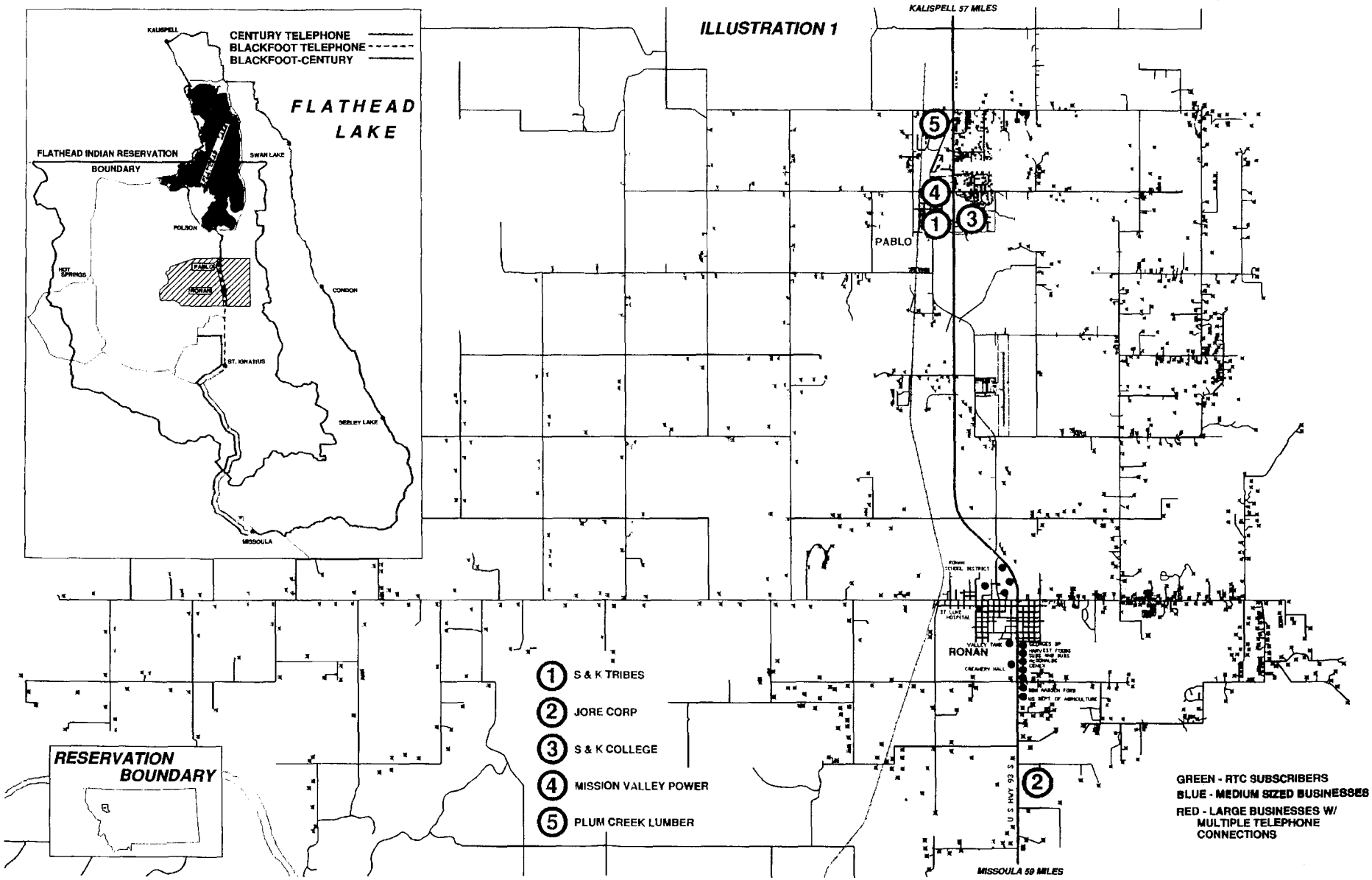
ILLUSTRATION 1