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

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

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SUMMARY

Rural CLECs have brought advanced calling features and advanced telecommunications services to many areas of rural America that have been poorly served by the large ILECs. In most cases, it has been necessary for the rural CLECs to overbuild the existing ILEC network with new facilities to provide these modern services. Because of the low population densities in these rural areas, the costs of construction and operation are higher than urban areas. Consequently, the only way local service can be provided at comparable rates is through additional revenue streams - - principally, access charges or universal support.

RICA's principal interest in this proceeding are changes to the present system which will affect originating and terminating access to long distance carriers. In the absence of a sufficient level of access revenues, Rural CLECs cannot compete with large carriers which retain the ability to average their rates over high and low density areas. RICA is concerned that the Commission will adopt a Bill and Keep regime in the context of urban non-access interconnection and then apply the same mechanisms to rural access, without adequate consideration of the essential differences between these forms of intercarrier compensation. Uncertainty over the future ability of Rural CLECs to recover a rational portion of their substantial costs through charges other than local service will necessarily inhibit the investment in improvements in service to rural America. Thus, the Commission must act promptly to minimize the period of uncertainty as it considers the proposals set forth in this proceeding.

Rather than adopting a Bill and Keep plan to reduce regulatory arbitrage, the Commission should instead focus on eliminating the most significant arbitrage situation by eliminating the ESP exemption in a manner that reasonably protects consumers continued access

to the Internet. If the Commission does proceed with developing a Bill and Keep replacement for access, it must determine how access revenues can be replaced for Rural CLECs in manner that does not cause their local rates to violate the principals of affordability and comparability with urban rates. This issue is essentially ignored in the two White Papers under consideration. RICA believes that, at least in the high cost rural areas, it remains necessary for IXCs and other access customers to contribute a fair amount to the cost of providing access to the outside world. Accordingly. RICA does not support replacement of all access revenues with universal service support.

RICA also recommends that if the Commission proceeds with developing a Bill and Keep replacement for access, it should seek to develop a political consensus. Any such substantial change should be undertaken for both interstate and intrastate traffic simultaneously, which will probably require development of a political consensus to support legislative change.

Before the
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In the Matter of	)	
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Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
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COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance ("RICA") submits its comments in response to the Commission's *Notice of Proposed Rulemaking* in this docket, released April 27,2001, FCC 01-132, 66 Fed. Reg. 28410 ("NPRM" or "Notice"). RICA is an alliance of competitive local exchange carriers ("CLECs") operating in rural areas and affiliated with Rural Telephone Companies.

I. A RESTRUCTURING OF INTERCARRIER COMPENSATION WHICH ELIMINATES ACCESS REVENUES WITHOUT SUBSTANTIAL REPLACEMENT WOULD HAVE A SIGNIFICANT ADVERSE IMPACT ON RURAL CLECS AND THEIR SUBSCRIBERS

A. Rural Clecs Have Brought Substantial Benefits to Rural Areas

Almost all Rural CLECS were created by rural incumbent local exchange carriers ("ILECs") following the 1996 amendments to the Communications Act. These ILECs instituted competitive entry in response to long standing requests for service from neighboring communities in the service territory of large, price cap regulated, ILECs. These large ILECs, generally Bell or GTE companies, had for some time avoided upgrading or even maintaining the facilities in these communities, and had long ago abandoned providing any local point of contact for subscribers. As a result, not only was POTS unavailable at quality and reliability comparable to urban areas, but CLASS services, Internet access and advanced services were unavailable in these areas. Once Rural CLECs have commenced operation in an area, the modem services which are expected in urban areas have also become available to rural customers for the first time.

Because of the antiquated nature of the incumbents' outside plant, it was necessary in most cases for the Rural CLECs to overbuild the existing ILEC network with new facilities. As a result of the low population densities in these rural areas, the costs of construction and operation are higher than urban areas. Given this high cost, the only way local service can be provided at comparable rates is if there are adequate additional revenue streams. Under the present system the principal alternative sources are access charges and universal service support. Because universal service support to competitive carriers is limited to that received by the ILEC, and because the ILECs often get no support in the specific exchanges served by Rural CLECs, access revenues are the principle alternative revenue source.

Rural CLECs generally recognized that reciprocal compensation payments for terminating ISP traffic would not be a viable long term source of funds and have not based their business plans on expectation of such revenues. Reciprocal compensation for non-ISP traffic is not a significant revenue factor for most Rural CLECs because they often eventually acquire a substantial majority of the subscribers in the communities they enter. Thus RICA's principal interest is in the proposed changes to the present system which will affect originating and terminating access to long distance carriers. **As** the industry evolves, and wireline to wireless interconnection becomes more significant, this focus may change.

B. Rural CLECs Could Not Continue Competing with Large ILECs in Rural Areas if Access Revenues Are Eliminated Without Equivalent Replacement

The NPRM asks for comments on proposals which would eliminate payments from other carriers for terminating traffic, and make the local carrier responsible for delivering its customers' calls to the serving wire center of the called party.[1] Although the NPRM states the Commission's intent to develop a "unified regime," it also states that the Commission does not "anticipate implementing major changes to our access charge rules in the initial phase of this proceeding."[2] Nevertheless, the NPRM intends to begin the process of answering the question "what comes after CALLS?"

RICA's comments will focus on the access charge issue and the need to give access equal billing with all other types of intercarrier compensation, even if the Commission's intent is not immediate application because access charges are the most significant form of intercarrier compensation for Rural CLECs. In the absence of a sufficient level of access revenues, Rural CLECs cannot compete with large carriers which retain the ability to average their rates over high and low density areas. Uncertainty over the future ability of Rural CLECs to recover a rational portion of their substantial costs through charges other than local service will necessarily inhibit the investment in improvements in service to rural America stated as goals of the Communications Act.

RICA is concerned that the Commission will develop its Bill and Keep proposals in the context of urban non-access interconnection, and then apply the same mechanisms to rural access, without adequate consideration of the essential differences between these forms of

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[1] NPRM at para. 4.
[2] **Id** at para. 97.

intercarrier compensation. Although the NPRM focuses on the goals of efficiency and competitive neutrality, this proceeding must also recognize that the goals of the Act include the promotion and preservation of universal service.[3]

RICA members have made substantial contributions to the advancement of both competition and universal service.[4] Although the proposed changes are so vague that they cannot be quantitatively analyzed, the conceptual elimination of access revenues without replacement poses a threat to the continued existence of RICA members. The Commission must act promptly to minimize the period of uncertainty during which substantial investment in telecommunications in rural America will be imprudent.

II. THE NEED TO REDUCE REGULATORY ARBITRAGE CAN BE MET WITHOUT ELIMINATION OF INTERCARRIER ACCESS CHARGES

Despite the importance of access revenues to RICA members, RICA also recognizes that there are issues involving opportunities for arbitrage presented by the present system which need to be addressed. The NPRM observes that the present system treats "different types of carriers and different types of services disparately, even though there may be no significant differences in costs among the carriers or services."[5] RICA members are community-based providers of a very capital intensive service who make investment with the intent of providing service into the indefinite future. From this perspective it is in their interest to reduce opportunities for such

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See, NPRM at para. 124.

4 *See, e.g.,* In *the Matter of Access Charge Reform: Seventh Report and Order and Further Notice of Proposed Rulemaking:* CC Docket No. 96-262, para. 65 (rel. Apr. 27,2001) ("[t]he record indicates that CLECs often are more likely *to* deploy in rural areas **the** new facilities capable of supporting advanced calling features and advanced telecommunications services than are non-rural ILECs").

5 NPRM at para. ***5***

arbitrage[6] It is not necessary, however, to throw the baby out with the bathwater.

In considering alternatives, it is instructive to examine the history of the industry to understand which alternatives have worked in the past and which have not. One system that did not work was the "Board-to-Board" separations model, which had many of the attributes of the current Bill and Keep proposals, but which was found unlawful by the Supreme Court in the landmark case of *Smith v. Illinois Bell.*[7] Even before *Smith*, however, the industry had developed a compensation plan which recognized the need for the long distance business to divide its revenues with the carrier providing local access.' The principle that the cost reductions arising from economies of scale of the long distance business should contribute to the support of the local facilities which make call completion possible was recognized by the Commission and NARUC in a series of separation agreements culminating in the ***Ozark*** plan. This principle continued to be reflected in the intercarrier agreements which were in effect until 1984.

It is important to recognize that the institution of access charges was not a result of a plan or policy based on economic analysis, but was the result of court decisions in the *Execunet* case which forced the Commission to allow competition in switched long distance service, and was accelerated by the Consent Decree requiring AT&T to divest the Bell Operating Companies.' At the same time, changes were made in the separations rules which phased out the Ozark formula and phased in the new Universal Service Fund in a manner which was designed

6 Atkinson-Barnekov note correctly that with constantly changing rules, parties cannot predict which ones will be favorable, so should seek "fair" rules. Jay M. Atkinson & Christopher C. Barnekov, *A Competitively Neutral Approach to Network Interconnection,* OPP Working Paper No. 34, Dec. 2000 ("Atkinson & Bamekov")

7 *Smith v. Illinois Bell Tel Co.,* 282 U.S. 133 (1930).

8 A 1922 average schedule contract is attached which illustrates this practice.

9 *MCI Telecommunications Corp., Decision,* 60 F.C.C. 2d 25 (1976); *rev'd, MCI Telecomms. Corp. v. FCC.* 561 F.2d 365 (D.C. Cir. 1977) *(Execunet I) cert. denied,* 434 U.S. 1040 (1978); *MCI v. FCC*, 580 F.2d 590 (D.C. Cir.) (Execunet II) *cert. denied,* 434 U.S. 790 (1978); *United States v. AT&T*, 461 F.Supp. 1314 (D.D.C. 1978).

to maintain the revenue flows of the LECs in a reasonably revenue neutral manner. The access regime has nevertheless served the public and the industry well, despite its various alleged and admitted failings. Before committing to the extremely complex task of constructing a totally new system, the Commission should seriously examine whether these issues can be addressed without jeopardizing the benefits of the system.

It is clear that the Commission should act to eliminate the more substantial regulatory disparities which promote arbitrage, chief among which is the **ESP** exemption. **If** the exemption is not replaced or eliminated, the regulatory disparity will create uneconomic incentives to encourage the growth of Internet Telephony. Although voice traffic over the Internet today is minimal, e-mail and "chat rooms" are much larger volume direct substitutes for services that pay access charges. These services are direct analogues of traditional common carrier services, but are exempted from the charges paid by their competitors.

Thus, the future of the Enhanced Service Provider ("ESP") exemption should be a central focus of this docket. The difficult challenge for the Commission will be to find a way to phase out the regulatory arbitrage for what is no longer an infant industry, but do so in a manner which does not harm consumers or impair their ability to fully participate in the Information Society. Directly connected to the **ESP** exemption issue is the unsustainability of the Commission's position that traffic to the Internet is interstate traffic subject to FCC jurisdiction, but cost allocation and recovery of such traffic is a state responsibility."

Rather than expend major resources over a substantial period of time trying to force rational cost recovery plans into an inadequate economic theory, the Commission should focus

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[10] *See* RICA's Comments filed on **July** 21,2000 in CC Docket No. 96-98 at 5

on the resolving the long standing access reform and universal service issues in a way that directs cost recovery to the areas where it provides essential public benefits.

III A "BILL AND KEEP" SYSTEM WILL NOT BE FEASIBLE UNLESS THE PROBLEM OF LOST REVENUE CAN BE SATISFACTORILY RESOLVED

A. The Two "Bill and Keep" Proposals Leave Significant Unanswered Questions

If the Commission nevertheless determines to proceed with consideration of the Bill and Keep proposals as a replacement for access charges, it must determine how access revenues can be replaced for Rural CLECs in a manner that does not cause their local rates to violate the principles of affordability and comparability with urban rates. This issue, along with several others, is essentially ignored in the two White Papers under consideration.

DeGraba's COBAK proposes to eliminate terminating charges and make the calling party's network responsible for transporting calls to the called party's central office." Atkinson-Barnekov propose to share equally interconnection costs.[12] Both essentially analyze intercarrier situations where the two carriers are retail providers to the calling and called parties. As such, either variation on "Bill and Keep" can be evaluated in context of the typical Section 251 interconnection. However, application of Bill and Keep as a replacement for access presents additional, and more complex questions. In the absence of sufficiently specific scenarios, it is not possible to quantify the precise impacts on the various sources of revenues which are necessary to the provision of competitive service in rural areas. In order to evaluate the proposals in the access replacement context on either a qualitative or quantitative basis, it is necessary to

11 Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime*, OPP Working Paper No. 33, Dec. 2000

12 Jay M Atkinson; Christopher C. Barnekov, *A Competitively Neutral Approach to Network Interconnection*, OPP Working Paper No. 34, Dec. 2000.

provide sufficient specificity to various scenarios.

B. Alternative "Bill & Keep" Scenarios

The obvious Bill and Keep scenario would continue the current system in which customers have separate retail providers of local and long distance service, but simply eliminate all access revenues, or possibly just terminating access. This scenario would require local carriers to increase local rates to replace revenues previously provided by access. For rural ILECs and CLECs, a very substantial increase in USF support would also be required to maintain rural local service rates comparable to urban rates because of the much higher costs of local distribution. While this scenario would eliminate the terminating access monopoly issue, the problem of allocation of joint and common cost would remain if originating access were retained.

A very different scenario would return the local carrier to its pre-access status as the retail provider of long distance service, i.e. the local carrier would bill customers as a retail provider of both local service and long distance calls. The carrier's costs of its own facilities and transport purchased from other carriers could be recovered through a variety of pricing plans plus universal service support. In this scenario, current retail IXCs could also become the local carrier, through either lease or construction of facilities.

This model would change the present system in several significant ways. It would move intercarrier relations in telephony to a system much closer to that of the Internet. Local carriers would be the retail provider for both local and long distance service. Interexchange carriers would function in a wholesale capacity much as the "backbone" carriers do for the Internet, offering service through various term contracts and perhaps a spot market. Subscribers would choose among competing service providers which would provide communication to everywhere, eliminating the increasingly arbitrary distinction between local and long distance, It would move wireline carriers into position to compete with wireless carriers, which currently have a regulatory advantage in terms of local calling scope and many of which have already eliminated the local/long distance distinction. With appropriate regulatory changes, the necessarily arbitrary allocation of joint and common costs could be eliminated; rate regulated carriers would need to determine only total cost. End users would regain their preferred single bill for telephone service.

Although RICA does not believe the Commission should proceed with consideration of Bill and Keep at this time, if it does do so, it should consider the above scenario as one of the possible variations, upon which a quantitative analysis of its impacts could be performed. Any such analysis must still recognize disadvantages described in subsection C, below.

C. No Bill and Keep Scenario Appears Feasible Unless Adequate Alternative Revenue Sources Are Established

Without an adequate replacement for the whatever access revenues are foregone, Rural CLEC local rates would necessarily have to raise to the point where competition with large ILEC would be impossible because the large ILEC will retain the ability to average its rates over dense and sparsely populated areas. If the large ILEC were forced to deaverage its rates to reflect comparable costs, then its rates, as well as the Rural CLECs rates would fail to meet the affordability and comparability tests of Section 254. RICA believes that, at least in high cost rural areas, it remains necessary for IXCs and other access customers to contribute a fair amount to the cost of providing access to the outside world. RICA therefore does not support replacement of all access revenues with universal service support.

IV LEGISLATIVE CHANGES WILL BE REQUIRED IF INTRASTATE ACCESS IS TO BE INCLUDED

Among the most significant of the "same service/same cost/different price" anomalies in the present system is the state-interstate differential.[13] Although the Commission apparently has substantial authority to establish rules for Section 251 interconnections[14] and for LEC-CMRS interconnection,[15] there does not appear to be any way under the current law for the Commission to "ensure that all states adopt a bill-and-keep approach to intrastate access charges." Rather than spend time and resources litigating through the Supreme Court with the outcome uncertain, the Commission should develop a proposal for which there is a consensus with state regulators, then seek their support for legislation to establish national rules while maintaining an appropriate role for the application of the expertise of state commissions to local situations.

V CONCLUSION

A fair and adequate system of intercarrier compensation, with minimal opportunity for regulatory arbitrage, is necessary to the existence of both a competitive market and the preservation and enhancement of Universal Service. It is not, however, either necessary or appropriate to adopt a Bill and Keep plan at this time to achieve these goals. By substantially reducing the revenues available to recover the high costs of providing rural service, Bill and Keep plans would effectively eliminate the ability of Rural CLECs to provide competitive service alternatives. The Commission should instead focus on eliminating the most significant

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13 See, NPRM at para. 121. Some states have eliminated this problem for access charges by requiring that intrastate access charges be the same as interstate charges.

14 *See AT&T v. Iowa Utilities Board*, 119 S. Ct. 721, 737 (1999).

15 47 U.S.C. 201(a), 332(c)(1)(B).

arbitrage situation by eliminating the ESP exemption in a manner that reasonably protects consumers continued access to the Internet.

If the Commission does proceed with developing a Bill and Keep replacement for access, there are significant practical, economic and political hurdles to overcome before a transition to such a system can begin. RICA cautions that the task will not be quick or easy. Although there are substantial challenges to ensure its feasibility, RICA suggests that if the Commission determines to consider a Bill and Keep plan, that it establish a plan for quantitative evaluation of the most promising scenarios in order to be able to assure itself and the public that rates in rural areas will remain affordable and rural CLECs will have a fair opportunity to compete with large ILECs. Any such substantial change should be undertaken for both interstate and intrastate traffic simultaneously, which will probably require development of a political consensus to support legislative change.

Respectfully submitted

Rural Independent Competitive Alliance

By ______________________

David Cosson
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Its Attorneys

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ATTACHMENT

WHEREAS, the parties hereto on the 10th day of August, 1922 entered into a written agreement providing for the connecting of their respective telephone systems; and

WHEREAS, it is desired to change in that agreement the provision that, for each incoming and outgoing message sent over the lines of the first party, the said first party will pay to the second party the sum of 5c; therefore,

IT IS MUTUALLY AGREED by and between the parties hereto that the provision above referred to is hereby cancelled and, in lieu of the compensation therein provided, the said first party is to pay the second party, for originating and terminating toll business of the first party, an amount for each originated message determined from the table below. This compensation is to be payment in full for all services and facilities furnished by the second party for the origination and termination of the business of the first party, at the exchange of the second party.

It is understood that the terms and conditions set forth in the written agreement, previously referred to, shall continue in effect unchanged, except as expressly modified in this Supplemental Agreement. The modification becomes effective________________, 19___.

SIGNED this 10th day of August, 1922.

Northwestern Bell Telephone Co

By____________________

General Commercial Superintendent.

Ashby Telephone Company

Name of Connecting Company.

By____________________

President.

TABLE OF COMMISSIONS

Average Rev. Per Message	Comm. Per Message	Average Rev. Per Message	Comm. Per Message
More than 10c but not more than 12½c	8½c	More than 42½c but not more than 45c	11¾c
" " 12½c " " " " 15c	8¾c	" " 45c " " " " 47½c	12c
" " 15c " " " " 17½c	9c	" " 47½c " " " " 50c	12¼c
" " 17½c " " " " 20c	9¼c	" " 50c " " " " 52½c	12½c
" " 20c " " " " 22½c	9½c	" " 52½c " " " " 55c	12¾c
" " 22½c " " " " 25c	9¾c	" " 55c " " " " 57½c	13c
" " 25c " " " " 27½c	10c	" " 57½c " " " " 60c	13¼c
" " 27½c " " " " 30c	10¼c	" " 60c " " " " 62½c	13½c
" " 30c " " " " 32½c	10½c	" " 62½c " " " " 65c	13¾c
" " 32½c " " " " 35c	10¾c	" " 65c " " " " 67½c	14c
" " 35c " " " " 37½c	11c	" " 67½c " " " " 70c	14¼c
" " 37½c " " " " 40c	11¼c	Commission continuing to increase at the same rate for higher average revenues per message.	
" " 40c " " " " 42½c	11½c		

The amount of commission for a given month is determined as follows:

(1) Ascertain the average revenue per message originated by dividing the total amount of the charges on business originated that month by the number of completed messages originated. A message for which the charges are reversed will count as an originated message at the point where the charges are payable.

(2) From the table, determine the amount of commission per message corresponding to the average revenue per message.

(3) Multiply the number of originated completed messages by the amount of commission per message determined from the table.

CERTIFICATE OF SERVICE

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Independent Competitive Alliance" was served on this 21st day of August 2001, via hand delivery or by first class, U.S. mail, postage prepaid to the following parties:

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Ann Tait

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