BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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IN THE MATTER	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

To: The Commission

COMMENTS OF RONAN TELEPHONE COMPANY AND HOT SPRINGS TELEPHONE COMPANY

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COMMENTS

Ronan Telephone Company (RTC) is a small, independent family owned Incumbent Local Exchange Carrier (ILEC) serving the rural communities of Ronan and Pablo on western Montana's Flathead Indian Reservation. Ronan Telephone serves approximately 3,000 households, businesses and government operations, including the headquarters of the Confederated Salish & Kootenai Tribes and the Salish Kootenai College. Hot Springs Telephone

Company (HSTC) is also a small, independent family owned ILEC, which serves approximately 800 customers in Hot Springs, Montana and the surrounding area, which is also located on the Flathead Indian Reservation.

RTC and HSTC respectfully offer the following comments strongly opposing the Commission's bill and keep proposals in this Docket:

Theme and Synopsis of RTC Comments:

Any business that is required by law to provide services to its competitors without compensation will be unwilling and, ultimately, unable to make investments to improve its services; in the long term, a business so burdened cannot survive. **An** intercarrier "bill and keep" system will be severely detrimental to the universal service goals of state and federal law, by its inevitable result of drastically increasing basic local rates.

Example: **A** hardware store owner has an investment in his store, including the building and all the necessary shelving, product displays, personnel and selling and accounting tools needed to offer hardware products to the public. If this hardware store owner is required to provide shelf space to a direct competitor on a "bill and keep" basis (i.e., no rent or other compensation paid by the competitor to the owner for the facilities used by the competitor) the owner cannot possibly compete with the competitor because the owner is responsible to pay the costs that allow the competitor to sell his products. And, the owner's other customers ultimately will have to pay the costs of the infrastructure, resulting in further subsidization of the competitor. Such a legal requirement will ultimately deprive the public of services, because the infrastructure needed by both will deteriorate as the incentive and ability of the owner to reinvest in that infrastructure has been eliminated.

These comments also request a clarification from the Commission that small rural carriers are exempt from the Commission's symmetry reciprocal compensation rules. We also comment that the FCC lacks jurisdiction over intrastate access charges. Also, we maintain that a bill and keep system would not satisfy the Act or constitutional requirements if it were applied to unequal traffic flows, and unless the costs on each carrier's network were shown to be the same.

Symmetry Rule

The Notice in this proceeding requests comments regarding the FCC's reciprocal compensation "symmetry rule" presumptions. (NPRM, ¶¶102-108, 118; 47 C.F.R. §51.713). RTC believes that the current rules need amendment, in order to conform to 47 U.S.C. §252(d)(2) (cost recovery, and compensation to terminate on each carrier's network), and to sound public policy and economic principles.

RTC has a pending request to the FCC staff requesting a clarification of the FCC reciprocal compensation symmetry rule (47 C.F.R. §51.711). This request was filed with the Commission on February 20, 2001; and RTC respectfully requests consideration of the issues therein in this proceeding (See, Letter attached hereto). RTC requests clarification that the symmetry rule does not apply to small rural carriers who hold the "251(f)(1) rural exemption" pursuant to the FCC's statements in Paragraph 1088 of the 1996 Local Competition "First Report and Order" (11 FCC Rcd. 15499). There are circumstances where it is patently unfair to apply the symmetry rule in its current form; for example, to require an ILEC to terminate calls to a large, sparsely populated rural area for the same rate as a CLEC charges to terminate calls to a few large business customers in the central business district of a small town. The state commissions should be given clear authority and flexibility to consider sound economics and policies in individual circumstances.

Bill and Keen Legal Authority and Traffic Balance

The Notice in this proceeding also requests comments regarding the FCC's proposition that bill and keep satisfies the Act even when traffic is not in balance (NPRM, ¶75-77). RTC firmly believes that such a policy is blatantly inconsistent with the Telecommunications Act (Sections 252(d)(1) and (2)), and probably an unconstitutional taking as applied in many circumstances. In particular, to satisfy legal scrutiny, such a bill and keep rule would have to be strictly limited by two requirements: 1) that the traffic between the networks would have to be equal or very close to equal; and 2) the costs to terminate traffic on each network would have to be proven to be equal (also, there should be consideration of a competitor's cream-skimming strategy, and the incumbent's ongoing responsibility to serve the costly outlying areas).[1]

Further, the FCC requests comments on whether it has the authority to require bill and keep for intrastate traffic (NPRM, ¶121 et.seq.). RTC joins, in what will undoubtedly be a plethora of other comments, in stating that the **FCC** would clearly lack any such authority to pre-empt state ratemaking jurisdiction. *See*, Telecommunications Act, Title VI, Sec. 601© (the Act does not impair, modify or supersede state law unless expressly so provided); 47 U.S.C. §152(b) and 201(a) (limiting FCC authority to interstate jurisdiction and leaving intrastate jurisdiction to the states); 47 U.S.C. §252(d) (Act's provisions referring exclusively to state commission authority) and *Louisiana PSC v. FCC*, 476 U.S. 355 (1986). RTC's legal counsel is not aware of any authority or reasonable argument for such an extension of FCC jurisdiction.

Policy Discussion:

It has been recognized in the law and policy of this country for over 65 years that universal rural wireline telephone networks are a valuable infrastructure and provide a valuable service to society. The history and economic reality of utility services, whether it be electric power, telephone, natural gas, or cable television, illustrates that user density is the primary determinant of the level of system costs; e.g. lower density translates to higher costs per customer served. Prior to Roosevelt's New Deal, this reality meant rural people most often lacked electric power and telephone service. People living in the most rural settings generally do not have natural gas service or cable television service to this day for the same reason.

The wiring of rural America for power and communication was the result a national policy

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[1] In an ongoing Montana PSC proceeding, the state commission ordered **bill** and keep without any showing of equal costs on each network, and despite clear evidence of an 80/20 traffic imbalance. RTC believes that this ruling **will** undoubtedly be reversed on appeal. (MT PSC Docket No. D2000.1.14)

decision to provide public support to augment private capital, to expand these services to the rural people of America. Rural America responded by using these tools to help make American agriculture one of the keystones of the post-war economy. Power and communications also facilitated a large amount of other economic industrial development in rural areas as well; our Agriculture and related rural industries is one reason the United States is the only world superpower today!

Our rural wireline telephone distribution system is the best in the world, and historically emerged and thrived as a result of 1) private investment (often by small, community based companies); 2) publicly supported low interest debt **(REA);** and *3)* the mandated sharing of Bell System long distance calling revenue with rural providers. Prior to **1983,** rural telephone companies participated in a regulated partnership with the Bell System that divided long distance calling revenues in accordance with national settlement contracts approved by the FCC. After the divestiture of AT&T, carrier access charges assessed to all long distance carriers and the universal service funding replaced "toll settlements" as the primary funding mechanism for rural telephone infrastructure. Thus, although the system supporting rural universal service has been reformed and modified over the years, the basic structure has remained stable **--** that is, the support for the rural wireline infrastructure and reasonable rural rates by means of charges to other carriers using the network.

In this proceeding, where the FCC is investigating "bill and keep" as a mandated mechanism for all intercarrier compensation, it is necessary to consider this long term historical perspective and recognize that the construction and maintenance of the rural wireline telecommunications infrastructure could not have been accomplished without "toll settlements" and the carrier access fees and universal service programs that succeeded them. It is also vital that the Commission realize that a universal bill and keep system is directly contrary to the provisions in the Telecommunications Act which mandate recovery of the costs incurred to provide service to other carriers, 47 U.S.C. §252(d)(2)(A) and 252(d)(1). Bill and keep is not required by the Act, and is only permitted in very limited circumstances; namely, where the termination costs and the traffic volumes are balanced to result in no net losses to either carrier

(See, 47 U.S.C. 252(d)(2); Cf. 47 C.F.R. 551.713).

A critical long term policy question must be considered in this proceeding: Can the rural wireline network infrastructure be maintained and enhanced in the long term if universal "bill and keep" interconnection is mandated? The following combination of circumstances would indicate the answer is "No" These are: 1) the high costs of rural networks compared to subscribers served, 2) the generally low average income levels in most rural areas[2]; and 3) the likelihood that any increases in local service costs resulting from eliminating fees paid by carriers will not necessarily result in decreases in the costs paid by rural customers for long distance services (in the largely deregulated toll market). Ronan Telephone believes that the rural wireline network will deteriorate under these circumstances, and rural consumers will pay substantially higher local rates [3]

It is instructive to recall that a very similar idea to "bill and keep" was considered and rejected just prior to the breakup of the Bell System in the early 1980's;when AT&T advocated, and the FCC seriously considered, a plan to drastically reduce or eliminate the contribution from long distance calling which supports the local wireline distribution infrastructure. Rural telephone companies took their message to Congress -- that huge increases in rural local telephone rates would result if support from long distance calling were eliminated. Under Congressional pressure, the Commission and the States instituted carrier access charges at an adequate level to sustain the operation of rural networks at affordable local rates, and provide the necessary incentives for investment in rural telecommunications infrastructure. Since 1983, the rural telephone industry has responded by providing digital switching and fiber optics in the rural telecoinmunications infrastructure, participated in the development of rural wireless telecoininunications. introduced advanced services to rural consumers, and pioneered the rural

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[2] This is particularly true in **a** rural Montana Indian Reservation community such as Ronan. The state of Montana **has** one of the lowest (if not the lowest) average per capita incomes in the nation, and the Indian reservations of Montana are among the poorest communities in Montana.

[3] RTC believes that the sparsest populated rural areas could experience local rates that would be five to ten times higher than current levels.

internet.

In the policy debate in this proceeding, the Commission must consider the generally high quality of service provided by rural wireline telecommunications systems today, compared to the most probable state of rural service if the equivalent of bill and keep had been implemented in the mid- 1980's. The Commission has identified certain problems in its Notice herein, but those problems do not justify completely abandoning the existing system, which has worked well for many decades to provide excellent rural telephone service throughout the country.[4] Furthermore, the U.S. 10th Circuit Court of Appeals recently stated that nothing in the Telecommunications Act requires the complete replacement of the existing state approved access fees for intercarrier compensation by explicit federal subsidies.[5] The proposals in the FCC's Notice are certainly not required by the Act, and in many respects are directly contrary to the Act's provisions.

Independent wireline rural telephone companies usually derive 50% to 80% of their total revenues from carrier access charges and related universal service support programs. In the case of Ronan Telephone, this figure is approximately 67% (with approximately 10% of that derived from universal service funding). If carrier access charges had not been instituted, rural local service rates would have been dramatically higher (typically between four-fold to ten-fold higher), and many low income rural residents would have been priced off the network. Without these funds, the incentive and ability of rural carriers to upgrade to digital switching and data capable networks would not have existed. In short, rural telecommunications services would have deteriorated dramatically. Fortunately for America, this did not occur, and the rural telecommunications infrastructure is far superior now to what it was in the mid-1980's.

In this proceeding, the Commission must squarely recognize that if the progress in

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4 RTC observes that many of the arbitrage problems identified by the Notice had their inception in policies established by the FCC, and which are therefore subject to revision by the FCC (e.g. the internet "ESP'' access charge exemption and the vast "major trading area" definition for "local" wireless calls).

5 "... we see nothing in §254 requiring the FCC broadly to replace implicit support previously provided by the states with explicit federal support." *Qwest v. FCC*, Cause No. 99-9546 et.seq. (10th Cir., July 31, 2001) (reversing in **part** and affirming in part FCC non-rural USF Order, FCC 99-304 "Ninth Order, Tenth Report and Order").

improving rural wireline telecommunications that has been achieved since the divestiture of AT&T, is to continue, and universal service preserved, incumbent rural LECs cannot be required to provide their services to competing carriers for free! **A** bill and keep system would apparently require the Incumbent LECs to provide free carriage through their switching and distribution facilities to their direct competitors, with all the ILECs' costs paid directly by the ILEC end users. In the case of Ronan Telephone, modern telephone and data services are provided on a low income Indian Reservation where average per capita income is approximately $1 6,500 per year. Currently, basic telephone service in Ronan and Pablo can be purchased for under $13.00 per month. However, because the local calling area only covers these two small communities (only 3,000 customers can be called on a local basis), the total actual average telephone bill, including the cost of long distance calling, is approximately $60 per month. If the carrier access fees on this long distance calling were eliminated, as it would under a "bill and keep" regime, the $13 per month local rate would have to be raised to recover revenue losses from carrier access. In Ronan's case, this would total approximately $70 per month per line, which could result in a five-fold increase in local charges However, the consumer's need to place toll calls would not change, and the rates for long distance in the rural unregulated toll market may not decrease, meaning the total average phone bill could rise from $60 per month to $130 per month. In this Indian reservation community, many current low income and fixed income residents who can afford a phone today, by paying **$13** per month and limiting long distance calling, would be priced out of basic phone service [6] This scenario would constitute drastic rate shock in an economically depressed low income area, and would be wholly inconsistent with the national and state policy goals of preserving reasonably priced telephone service for all Americans.

RTC is also alarmed by the FCC's actions regarding the definition of "local service" for wireless providers, when compared to the state's definition of local for wireline providers. The State of Montana has defined "local service" for wireline service as one or more grouped wireline exchanges that comprise a local community of interest. In the case of rural areas, this has usually

[6] Approximately 10% of RTC customers limit their telephone bill to less than $30 per month **by** limiting long distance calling.

translated into one or two wireline exchanges, and results in close to 200 wireline local calling areas in Montana (e.g. the Ronan and Pablo exchanges are a single calling area that comprise only a portion of Lake County, Montana, and only about 120 square miles). Calls outside these local wireline calling areas are toll calls, for which carrier access charges are assessed-- and which constitutes approximately 67% of RTC's total regulated revenues. However, the FCC definition of ''local'' for wireless providers is the "Spokane Major Trading Area", which includes the entire state of Montana, eastern Washington, northeast Oregon, the panhandle of Idaho and northern Wyoming (See, 47 C.F.R.§5 1.701(b)(2)). This area is approximately 700 miles from east to west and 300 miles north to south (or approximately the same area as the combined states of Maryland, Virginia, West Virginia, Kentucky, Illinois, Indiana, Ohio and Pennsylvania). For example, under the FCC definition, a wireless call that is carried 650 miles between Gillette, Wyoming and Moses Lake, Washington is defined as a local call. This is the same as saying a call from Washington, D.C. to St. Louis is a "local call"-- a clearly ludicrous result. Thus, a large proportion of the wireline long distance traffic carried in the intermountain west, which today requires the payment of carrier access charges, could be displaced by wireless traffic, for which reciprocal compensation applies. For a small rural ILEC like Ronan Telephone, the threat of this dichotomy is simple and potentially devastating. Long distance toll calls generate carrier access revenues that support the provision of universal service; wireless traffic implies reciprocal compensation, which generates essentially no revenue. The FCC's proposal in this proceeding is to require <u>both</u> types of traffic to be carried for free, which demonstrates the disconnect between the thinking of economists and regulators inside the beltway, compared to the realities of operating a rural network in the hinterlands.

The arbitrage problems described in the Commission's Notice were created by previous policy decisions of the Commission itself. The exemption of internet traffic from access charges was adopted by the FCC in **1983,** as a way of promoting the growth of the internet industry.[7]

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[7] See, "ESP Exemption". MTS/WATS Market Structure Order, 97 FCC2d at 715 (1983), and ISP-Bound Traffic Order, FCC 01-131, $11 and 77-88 (April 27.2001) (adopting bill and keep for new ISP-Bound traffic).

And, the huge "local" calling areas for wireless traffic was a way of encouraging the growth of the wireless industry as well. These FCC decisions were efforts to promote urban competition through regulatory fiat and government preference, instead of reasoned policy-making based on the realities of costs, technology and economics in rural areas. Sound policy-making cannot be based on theoretical competitive considerations alone or on assumptions that make the regulator's task less difficult. This is particularly true if the resulting policy serves as a disincentive for productive infrastructure investment. Such a situation will damage the long term integrity and service-providing capability of the network needed by rural customers. If the Commission adopts policies that make the regulator's job easier (e.g., "bill and keep" does not require difficult judgments of the regulator) but ultimately removes the incentives to invest by ILEC carriers, the consumer will ultimately suffer from an infrastructure that cannot provide adequate service. The problems identified in the FCC Notice do not justify reversing decades of sound universal service policies, nor the imposition of a completely new regime that would inevitably result in the deterioration of the infrastructure and service quality levels that have been successfully nurtured for so long

Ronan Telephone, under current ownership, has a four decade history of improving telephone service to the Flathead Indian Reservation. Over these 40 years, Ronan Telephone has rebuilt our switching and distribution systems three times, taking our community from 20-party per line service (with all calls connected by live operators) in 1960, to state of the art single party wireline voice and internet data services today. The latest round of improvements, undertaken during the decade of the 1990's(and which is approximately 85% complete) facilitated single-party service to the rural areas of this community that had been restricted to two parties per line from the mid 1970's to the end of the 1980's. In the process, all rural customers were served with a rebuilt switching and hybrid fiber/copper distribution network, that essentially eliminated long rural loops and the necessity of induction loading. These improvements now allow any of the rural subscribers to be able to utilize dial-up internet data services at the maximum speeds (approximately 40% of our customers use the internet today) and facilitates the provision of broadband data services throughout this rural area. In addition, during the 1990's, Ronan's local network experienced an 80% increase in the number of access lines served and traffic growth in excess of 3.5 times. These improvements required the investment of close to $5 Million during the 1990's; which is twice the amount of RTC's total cumulative investment from 1960 to 1989. Carrier access charges have largely facilitated and funded these efforts.

The dramatic growth Ronan's local telephone system has experienced has resulted both from the underlying growth of the community (approximately **2%** per year) and to the emergence of the Internet, which was unanticipated when Ronan's latest round of network improvements were planned in the early 1990's. The initiation and growth in the use of the Internet since 1995 has caused many Internet users to install a second telephone line in their homes. This unanticipated demand has caused the exhaustion of distribution facilities in some areas, even though the distribution was designed with double the capacity needed at the time. The capital requirements to meet this demand for expanded distribution infrastructure is a significant challenge since second lines used for Internet access generally are not used for long distance calling and hence do not generate significant carrier access charge revenues. Since local service rates today generate only about **30%** of the overall revenue of the company, a long term problem of underfunded capital infrastructure is developing. This capital/revenue squeeze will be thrust into an immediate crisis if bill and keep replaces carrier access charges from interexchange carriers.

The application of the 1996 Telecommunications Act (and FCC implementing rulings) to emerging competition in the Ronan area has resulted in the perversion of economic realities and the jeopardization of universal service goals. Unlike many similar small rural telephone companies, Ronan Telephone has experienced very selective wireline competition from two neighboring incumbent telephone companies, CenturyTel and the Blackfoot Telephone Cooperative. However, only the largest institutional and industrial customers in the service area (the five largest customers) have service options from these competitors to date. The overwhelming majority of telephone subscribers in this community still have no choice for local wireline service other than Ronan Telephone. If Ronan Telephone were to be displaced completely in servicing these largest customers, the lost revenues coupled with embedded costs would force Ronan to increase local telephone rates to the remaining subscribers by a drastic amount.

Ronan Telephone is also experiencing plenty of wireless service competition. This community is now served by two national cellular wireless carriers and one smaller sub-regional digital PCS wireless carrier.' Blackfoot Cooperative has also announced its intention and made efforts to initiate wireline competition for RTC's largest customers, using reciprocal compensation access. CenturyTel, the neighboring ILEC to the north, has also made competitive in-roads in the Ronan area for major wireline customers. This combination of competitive circumstances has led to a series of disputes with the Blackfoot Cooperative regarding interconnection, rate levels for traffic exchanged, and questions whether universal service support received by the Cooperative for its incumbent study areas are being used to fund competitive ventures outside the designated study areas (i.e., in Ronan and elsewhere in Western Montana).' Ronan Telephone is currently interconnected pursuant to Section 251(b)(5) with Blackfoot's PCS service, under an interim order from the Montana Public Service Commission mandating a "bill and keep" reciprocal compensation arrangement.[10] Ronan also has a complaint pending at the Montana Commission alleging misuse of federal USF funds by the Blackfoot Cooperative (MT PSC Docket No. D2000.S 63).

A third pending case also relates to wireless traffic. Nine Montana rural ILECs, including Ronan Telephone and the Blackfoot Cooperative and its ILEC subsidiary, Clark Fork

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[8] The PCS carrier is **a** wholly owned subsidiary of the Blackfoot Telephone Cooperative, one of the wireline competitors for Ronan Telephone's largest accounts.

[9] **See** 47 U.S.C. §254(e) and 254(k) and 47 C.F.R. 454.7.

[10] "Bill and Keep" was ordered in spite of evidence presented by Ronan that the traffic was 80% terminated by Ronan and 20% terminated by Blackfoot, a ratio which is not "roughly balanced' by any reasonable interpretation. as required by 47 C.F.R.§51.713(b). In addition, the Montana Commission did not address whether this interim bill and **keep** arrangement would "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network of calls that originate on the network facilities of the other" as required in Section 252(d)(2)(A)(i) of the '96 Act. This interim arrangement is now approaching its first annual anniversary with a final decision on rate levels not likely soon because of the "electric power crisis" the Montana Commission is addressing. MT PSC Docket No. D2000.1.14

Telecommunications, are pursuing a joint action against Qwest (formerly US West) for terminating traffic to the independents on interexchange Feature Group C connections (largely wireless cellphone traffic from the two cellular carriers operating in Montana) without compensating the independents for termination of these calls. Qwest terminates this wireless traffic to the independents under LATA-wide termination requirements and refuses to pay tariffed charges to the independents for services rendered. Thus, the smallest and most isolated of the independents such as Ronan Telephone, have no leverage to negotiate direct interconnection or reciprocal compensation arrangement with the cellular carriers that are the source of much of the disputed traffic. This case is currently being appealed by the nine independents to the Ninth **U.S.** Circuit Court of Appeals, after an adverse ruling to the independents by the Federal District Court in Montana.

Pending final rulings in these two cases, Ronan is being forced to provide free terminating services to both cellular wireless carriers (via Qwest LATA-wide termination service) and to a third wireless PCS carrier (via a Montana PSC ordered "bill and keep" 251(b)(5) interconnection). On the heels of these cases comes the FCC's NPRM herein, proposing that all intercarrier interconnection be provided by the ILEC for free under a mandated and unified "bill and keep" system.

In a nutshell, Ronan Telephone comments on this proceeding from the perspective of a very small rural ILEC that has experienced conflict, uncertainty and very costly regulatory proceedings and litigation revolving around what is possibly a unique rural competitive situation. The difficulties experienced by Ronan relate not to service quality rendered to customers (which are excellent); they are the direct result of the confusing and contradictory provisions of the 1996 Telecommunications Act and the often even more incomprehensible implementation policies of the Act by both federal and state regulators

To date, Ronan Telephone can detect very little benefit for the vast majority of our wireline telephone customers in Ronan from this evolving competitive environment. RTC does, however, foresee many problems looming on the horizon. The primary concern is the whether high quality "Plain Old Telephone Service" (POTS) can be provided to the generally low income people in this community for a price they can afford, if RTC is forced by regulation to provide free service to the many carriers who utilize its local network to complete calls. To the average POTS customer in Ronan, the prospect of dramatically increasing local telephone rates with very little prospect that long distance rates would decrease proportionately, would appear to be an implicit subsidy imposed on the rural customer to support the various carriers who will benefit from "bill and keep" access to the local exchange facilities. This is in sharp contrast to the goals of the Act: to reduce implicit subsidies, and the specific requirements for the recovery of costs from carriers to utilized networks, ***See,*** 47 U.S.C. §254 and 252(d)(2).

In summary, RTC has experienced the following over the past three years:

1) Finding itself embroiled in a test case around the issues of rural competition, rural reciprocal compensation and rural exemptions. The costs of these cases have been high and have diverted resources toward defending the company's traditional revenue sources (which are vitally needed to provide reasonably priced services to customers), thus depleting capital that would have otherwise been more productively reinvested to satisfy demand growth for existing services and for the provision of new and advanced services (which is also a goal of the Act);

2) The experience of having the neighboring ILEC (the Blackfoot Cooperative) apparently be able to use extensive USF funding (which is legally required to fund only the ILEC's incumbent customers for basic services) with apparent impunity to support competitive **CMRS** and CLEC activities outside the ILEC's incumbent study areas (See, 47 C.F.R. §§54.7, 54.101, 54.201); Further, this same ILEC having tax preferences, and being exempt from state PSC regulation; in all creating a grossly unlevel competitive playing field.

3) RTC's experience with the Montana Commission being reluctant to address the potential abuse of USF support to fund competitive ventures by supported ILECs (for political or unbeknownst reasons);

4) RTC having to meet this competition targeted only at the incumbent's best institutional customers, thereby potentially leaving the incumbent and its remaining

customers with the burden of maintaining the network available to serve all rural customers (the outlying and most costly to serve areas);

5) The neighboring ILEC then demanding and obtaining essentially free service from Ronan under Section 251(b)(5) to complete calls to the incumbent rural customers of Ronan Telephone; i.e. an interim "bill & keep" order, even though the current rule limits bill and keep to circumstances where traffic is "roughly balanced" and RTC demonstrated an 80%/20% traffic imbalance;

6) The ongoing "Access Reform" dockets at the FCC (the **MAG** plan)- which could reduce Ronan's total carrier access revenues by 30% to 45%; and finally,

7) This proceeding, the Federal Commission's apparent intention to replace carrier access charges with a "bill & keep" arrangement within 5 years. This would affect 70% of our current revenues and cause local telephone rates to skyrocket as much as five times higher than today, and/or make our firm much more dependent on universal subsidy support funding.

In trying to understand the rationale behind this bill and keep proposal, Ronan and Hot Springs have several observations:

1 The Federal Commission and its staff of attorneys and economists, appear almost exclusively focused on the urban east coast, with little appreciation for the challenges of serving rural communities well, particularly rural communities in the inland west, south and midwest. National policy must instead encompass the needs of our entire country, including the smallest of companies and the most rural and disadvantaged areas. .

2 All ILECs seem to be perceived by the federal regulatory authorities as the monopolistic enemy of true American free enterprise, whether they be the largest of public corporations serving tens of millions in urban settings (and engaged in mega-merger mania), or the smallest of firms serving a single rural small town such as Hot Springs, Montana, (attempting only to provide good service and remain

independent and community based).

3. The local wireline network infrastructure is ***presumed*** to be a "fully provisioned network' that can withstand being used by competitors without compensation, and which can continue to provide service in spite of the disincentives for infrastructure investment that such policies create. This single small rural carrier cannot see the benefits to its community, its employees, its owners or to the society as a whole, from a policy that forces it to make its service a gift to its direct competitors, to the detriment of its local consumers. Such a policy will build a subsidized, economically inefficient and illogical competitive house of cards on an infrastructure foundation that will ultimately collapse under the weight of the give-away.

The combination of the event's RTC has experienced has had a chilling effect on our faith in the future and our desire to continue to invest with full knowledge of these policy initiatives. We do not believe that the low income customers we serve can afford to pay many times more than today for their basic telephone service, nor can they afford to suffer significantly decreased service quality. We strongly believe that both increased costs and decreased service quality will result if rural incumbent LECs are ordered to provide free service to all connecting carriers, as proposed in this proceeding. And, we do not believe that support mechanisms (such as federal or state universal service funds) will be adequate to preserve rural universal service in the absence of payment for services rendered from connecting carriers; nor, as a matter of policy or pursuant to the Act, should such subsidies serve as a substitute for reasonable compensation from carriers. Ronan and Hot Springs also submit that such support systems are prone to "gaming" by participants willing to stretch or blatantly break the rules. Law and policy are much easier to make than to enforce, and rules that prohibit abusive use of such support systems are no exception

America has the finest telecommunications infrastructure on earth, built on a foundation of the universal wireline distribution of dial tone. The federal government now seems determined to pursue policies that will inevitably undermine this foundation. Even if the foundation does not crack in urban America (although we believe it eventually will), it will most certainly crumble in rural America! For the foregoing reasons, RTC and HSTC respectfully request that the Commission abandon its bill and keep proposals in this proceeding.

DATED: August 18, 2001

Respectfully,

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February 20,2001

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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 clarifyin the discussion of the "symmetry rule" in the Commission's 1996 Interconnection Order.[1] The symmetry rule is codified at 47 CFR 5 1.711.

Confusion has arisen over whether paragraph 1088 of the 1996 Interconnection Order exempts from application of the symmetry rule those small rural camers 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 camers holding the Section 251(f)(1) rural exemption.

[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 camer 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.' 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. 5 1.711(a). The rule does not apply to paging traffic. 47 CFR Sec. 5 1.711(c). Other limited exceptions are in 47 CFR 5 1.711(b).

5 47 CFR Sec. 51.711(b).

<u>Specific Language in the 1996 Interconnection Order</u>.

The 1996 Interconnection Order explained the symmetry rule and then discussed whether it should apply to small camers. 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.* <u>We also note that certain small incumbent LECs are not subiect to our rules under Section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission,</u> 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 camers 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 camers 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 /J.H.L.

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 PROMOTION
AND ADVANCEMENT
OF SMALL
TELECOMMUNICATIONS
COMPANIES

January 17,2001

Jay Wilson Preston
President
Ronan Telephone Company
312 Main St. SW
Ronon, 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 **5**1.701-51.717). **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.

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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 commenrs 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, dared 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 Clairmont

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