

K R A S K I N, L E S S E & C O S S O N, L L P
ATTORNEYS AT LAW
TELECOMMUNICATIONS MANAGEMENT CONSULTANTS

2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Telephone (202) 296-8890
Telecopier (202) 296-8893

June 28, 2002

Ms. Marlene H Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation of the
Rural Independent Competitive Alliance
In CC Docket No. 96-262
WC Docket No. 02-78
CC Docket No. 96-45
CS Docket No. 01-290
CC Docket No. 00-256
CC Docket No. 01-338
CC Docket No. 01-92
CC Docket No. 02-33

Dear Ms. Dortch:

Attached please find an Ex Parte Presentation of the Rural Independent Competitive Alliance (RICA) relating to the above-referenced proceedings. This transmittal and the ex parte are being filed electronically pursuant to Commission rules 1.1206 and 1.49(f).

Should you have any questions, please do not hesitate to call.

Respectfully submitted,

/s/
Clifford C. Rohde
Counsel for RICA

K R A S K I N, L E S S E & C O S S O N, L L P
ATTORNEYS AT LAW
TELECOMMUNICATIONS MANAGEMENT CONSULTANTS

2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Telephone (202) 296-8890
Telecopier (202) 296-8893

June 28, 2002

Ms. Marlene H Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation of the
Rural Independent Competitive Alliance
In CC Docket No. 96-262
WC Docket No. 02-78
CC Docket No. 96-45
CS Docket No. 01-290
CC Docket No. 00-256
CC Docket No. 01-338
CC Docket No. 01-92
CC Docket No. 02-33

Dear Ms. Dortch:

On June 27, 2002, Rick Vergin, Gerry Anderson, and David Schmidt (all three members of the Board of the Rural Independent Competitive Alliance ("RICA")) and Dave Cosson and I of Kraskin, Lesse & Cosson, LLP, met with Commissioner Michael Copps and his advisor, Jordan Goldstein, in Commissioner Copps' office, and discussed the issues listed in the attached "talking points" document.

In addition, the following additional issues were raised.

1. Access to universal service support funds should be based on the recipient carrier's costs, not on the costs of the incumbent. In many cases, the costs of rural CLECs far exceed the costs of the incumbent non-rural carrier, whose costs are averaged over a large study area that includes a great majority of lines outside rural areas. It is essential that policies be enacted that allow rural CLECs to obtain reasonably stable projected revenue. Current USF and access policies do not permit such stability.
2. The Commission needs to focus attention on the demand side of broadband in rural areas. In the areas served by rural independent LECs, whether incumbent or

competitive, access to advanced services typically exceeds 70%. It is so far uneconomical, however, to provide access to the remaining rural customers because of the great distances (and terrain) separating customers. The experience of deployment is much different for the rural independent LECs than it is for the large non-rural incumbent carriers serving some rural areas. In cases where rural CLECs compete against large incumbent non-rural LECs, the former have been able to deploy modern, advanced facilities (both DSL and cable modem service), whereas the latter have let the physical plant substantially degrade. In many areas, rural customers of the large incumbent non-rural LECs cannot even obtain dial up access to the Internet because the physical plant is so outmoded and degraded. The independent rural LEC experience is such, however, that there is only usually between a 7 and 10% take rate for advanced high-speed services. Attention needs to be placed on improving end user take rates.

Should you have any questions concerning this ex parte presentation, please do not hesitate to call our office.

Respectfully submitted,

/s/
Clifford C. Rohde
Counsel for RICA

Encl.
Cc: Commissioner Copps
Jordan Goldstein

RURAL INDEPENDENT COMPETITIVE ALLIANCE (RICA)

June 2002

1. ON RECONSIDERATION OF *CLEC ACCESS CHARGE REFORM* THE COMMISSION SHOULD ADDRESS THE ISSUES RAISED BY THE COURT OF APPEALS DECISION VACATING ITS *DECLARATORY RULING*

- The U.S. Court of Appeals for the District of Columbia Circuit vacated the *Declaratory Ruling* on June 14, 2002, because it believed the Commission had ordered interconnection and establishment of through routes without following the procedures of 201(a) of the Communications Act.
- Because the *CLEC Access Charge Reform* Order is based on the same Section 201(a) analysis—the requirement to provide service on reasonable demand—the Commission on reconsideration must address the Court’s concerns and provide a sustainable decision.
 - In vacating the *Declaratory Ruling*, the Court acknowledged, but refused to consider as a *post hoc* rationale the fact, reflected in the record before the Commission, that interconnection already existed and traffic was being exchanged, so there was no need to follow the interconnection procedures.
 - In addition, the Commission could determine that a sufficient hearing has been conducted, and enter the findings and order required by the second clause of Section 201(a).
 - The Commission should address and resolve each of the additional reasons put forth on the record by RICA and others as to why the conduct of AT&T and Sprint in refusing, directly or constructively, to serve CLEC customers and to pay CLECs their lawful tariffed rates, violates the Communications Act. Specifically:
 - Such conduct is an unreasonable practice in violation of Section 201(b)
 - Such conduct is unreasonably discriminatory and prejudicial, in violation of Section 202(a)
 - Refusal to serve violated (until July 31, 2001) the carriers’ tariffs contrary to Section 203(c)
 - Discontinuance of service to CLEC customers without Commission certification violates Section 214(a).
 - Refusal to interconnect violates Section 251(a)
 - Refusal to serve CLEC customers violates Section 254(g)
- If AT&T and Sprint are allowed to resume refusing to serve CLEC customers and refusing to pay CLECs’ lawful rates, rural CLECs will experience a financial crisis comparable to that that has decimated the urban CLEC industry.

2. THE COMMISSION SHOULD RULE FAVORABLY ON RICA’S OTHER RECONSIDERATION REQUESTS.

- Unless rural CLECs are able to recover a reasonable proportion of their costs from the Interstate jurisdiction, comparable to that of rural ILECs, competition will not expand in rural areas and may not be able to continue

[over]

- Unless rural CLECs are able to recover a reasonable proportion of their costs from the Interstate jurisdiction, comparable to that of rural ILECs, competition will not expand in rural areas and may not be able to continue. (cont.)
 - Revise the eligibility criteria from restricting the rural benchmark to those rural CLECs that compete with “non-rural carriers” to applying the rural benchmark to rural CLECs that compete with “price cap carriers.”
 - Revise the rural benchmark rate to match the entire NECA rate structure, including the carrier common line charge.
 - Revise the eligibility criteria to permit a CLEC that extends its lines into a disqualifying non-rural area to lose eligibility for the rural benchmark only “to the extent” that it serves subscribers in non-rural areas.
 - Permit eligible rural CLECs to continue using the rural benchmark when entering a new MSA.

3. MAG AND THE RURAL TASK FORCE

The Rural Benchmark ties rural CLEC rates to NECA rates. The NECA rate is substantially reduced by shifting recovery to a universal service mechanism not available to rural CLECs. As a result, rural CLECs’ recovery of costs of providing interstate access becomes inadequate.

4. UNIFIED INTERCARRIER COMPENSATION

RICA urges the Commission not to adopt a Bill and Keep plan to reduce regulatory arbitrage. RICA recommends that, should the Commission proceed with developing a Bill and Keep replacement for access, 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 principals of affordability and comparability with urban rates.

5. UNE PERFORMANCE STANDARDS

For those RICA members that have found it necessary to utilize UNEs, their experience has been one of delay and frustration in obtaining UNEs and other facilities of the large ILECs. To address these anti-competitive tactics of the large ILECs and to assist in enforcing Commission Rules, RICA urges the Commission to adopt specific performance measurements and standards and apply them solely to large ILECs. To impose performance standards and measurements on small and rural ILECs and CLECs with no evidence of discriminatory behavior would unjustly place unnecessary burdens and costs on these carriers.

6. SUNSET OF EXCLUSIVE CONTRACT PROVISION FOR CABLE TELEVISION

- RICA supports the recent Commission decision to extend the ban on exclusive contracts between vertically integrated cable operators and programming vendors.
- Because exclusive contracts prevent new entrants from being able to compete on an equal basis with incumbent cable television providers, the Commission should expand the current prohibition to include all exclusive contracts between incumbent cable television operators and programming vendors.
- The Commission must also address unlawful discriminatory behavior that incumbent cable television companies have exhibited towards new entrants.

7. DESIGNATION OF RURAL CLECs AS INCUMBENTS

Several Rural CLECs have substantially replaced the incumbents in their service area, and are prepared to assume the obligations of incumbents. The Commission should established prompt, straightforward proceedings to process Section 251(h)(2) petitions efficiently.