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January 31, 2003

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 (RICA) in
CC Docket No. 96-45
CC Docket No. 96-262
CC Docket No. 98-77
CC Docket No. 98-166
CC Docket No. 00-256
CC Docket No. 01-92
CC Docket No. 02-33
WC Docket No. 02-78
WC Docket No. 02-361

Dear Ms. Dortch:

On January 30, 2003, Rick Vergin, President of the Rural Independent Competitive Alliance (RICA), accompanied by David Cosson and Clifford Rohde, RICA Counsel, met William Maher, Chief of the Wireline Competition Bureau, and Carol Mattey, Deputy Bureau Chief, to discuss universal service and access charge issues pending before the Commission, the prompt and fair resolution of which are critical to the rural CLEC industry.

During the meeting, RICA representatives elaborated on the points made in the attached January 2003 white paper prepared by RICA, "Critical Universal Service And Access Issues," and delivered to each of the above-named individuals. Foremost among RICA's concerns are 1) that the Commission soon strengthen and modify as necessary, pursuant to RICA's Petition for Reconsideration, the decision reached in the Seventh Report and Order in CC Docket No. 96-262 ("CLEC Access Charge Reform Order"); and 2) that the Commission's universal service rules be modified to ensure that qualifying carriers —whether wireline or wireless, incumbent or competitor— may receive Universal Service Fund support based on the carrier's own costs. Upon inquiry by Ms. Mattey, the RICA representatives indicated that RICA has not taken a position on the issue, but expressed their opinion that should wireline broadband be declared to be an information service and so not regulated under the Title II rules, the costs and revenues associated with the local distribution plant should not be removed from the interstate revenue requirement in order not to endanger the universal service support mechanism and negatively impact the local rates that rural ILECs and CLECs alike charge end users.

This transmittal letter and the ex parte are being filed electronically pursuant to Commission rules 1.1206 and 1.49(f).

Please contact the undersigned for any questions related to this submission.

Respectfully submitted,

/s/
David Cosson
Clifford C. Rohde
Counsel for RICA

Enclosure

Cc: William Maher
Carol Mattey

CRITICAL UNIVERSAL SERVICE AND ACCESS ISSUES

RURAL INDEPENDENT COMPETITIVE ALLIANCE (RICA)

JANUARY 2003

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Introduction and Summary

The Rural Independent Competitive Alliance ("RICA") is composed of rural CLECs which have demonstrated the commitment and capability to provide significantly improved basic telecommunications services and advanced services on a competitive basis in rural communities historically neglected by the large incumbent carriers. RICA member CLECs typically employ a facilities based, "edge out" approach to competition that requires a level of investment comparable to that required for their affiliated incumbent rural telephone companies.

Although these rural CLECs have made major investments in telecommunications plant in order to provide these significant service improvements, substantial areas of rural America remain telecommunications backwaters without competitive choice. In many of these areas, RICA members are favorably situated to make the investments required to bring these rural areas on a par with urban areas. They cannot proceed, however, because the current regulatory structure limits the interstate revenue available to a level substantially below what would be available to a rural incumbent telephone company operating in the same area. If rural CLECs do not have an opportunity to receive adequate interstate revenues, in the form of access revenues or universal service support, the rural areas served by large companies will continue to be ignored while those companies concentrate on competitive threats to their urban areas.

RICA has therefore adopted the following guiding principles which underlie its positions on the myriad of universal service and access proceedings before the Federal Communications Commission and the Federal-State Joint Board on Universal Service.

1. The provision of access to interexchange service imposes real costs on local exchange carriers, and these costs are legitimately recovered through access charges imposed on those services.

2. The function of universal service support should be to provide recovery from all interstate service providers of those costs not recovered by access charges or reasonable and comparable local service charges.

3. A rural competitive local exchange carrier should be eligible for the same level of interstate revenue as if it were an incumbent rural telephone company.

4. The Commission should aggressively enforce the provisions of the Communications Act and its rules which require interexchange carriers to provide service to CLEC customers in exchanges where they serve ILEC customers, and at rates comparable to the rates offered in urban areas, including all rate plans.

5. A rural CLEC should be eligible for universal service support upon its own costs, and not under the rules applicable to the incumbent with which it competes.

6. A rural CLEC should be allowed to file tariffs for interstate access service at the same level as a rural incumbent telephone company.

Background:

Origin of the Universal Service Fund

Long before the articulation of a specific federal "universal service" policy designed to promote affordable rates for local telephone service, FCC regulation played an important role in the successful deployment of telephone service to rural and high cost areas to a greater extent than seen in most parts of the world. In 1930, the Supreme Court established the principle that where telephone service is subject to regulation by both state and federal regulation, there must be some system for allocation of the investment and expenses between jurisdictions in order to avoid gaps or overlaps. In 1934 the FCC was created by Congress for the purpose of making rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable rates available to "all the people of the United States." The 1934 Act authorized the FCC, acting on the recommendation of a federal-state joint board, to allocate the investment and expenses of telephone companies between state and federal jurisdictions.

The FCC eventually implemented these provisions in a series of proceedings which culminated in the "Ozark Plan." The Ozark Plan significantly increased the share of the total cost allocated to the interstate jurisdiction in recognition of the fact that while costs were declining rapidly for long distance circuits, local distribution costs incurred to originate and terminate long distance calls were not declining. State regulators argued, and the FCC agreed, that the savings from the productivity increases should be shared between state and federal jurisdictions.

Under the Ozark rules, telephone companies allocated their costs of providing local loops to the interstate jurisdiction in proportion to the length of haul and holding times of interstate calls made to and from their subscribers. The result for many rural telephone companies was that a substantial portion of their cost, up to 85%, was recovered from the long distance business in accordance with their "settlements" contracts with the Bell System. These contracts provided that the individual companies' share of the long distance revenue generated by their subscribers would be their cost as defined by the FCC prescribed separations manual.

The substantial increase in interstate revenues permitted the telephone industry to expand to "all the people," and upgrade to more efficient and reliable technology, while maintaining a reasonable and affordable level of local rates. However, by 1981 it became apparent that changes were needed because the interstate allocation was growing faster than interstate revenues. The FCC froze the allocation percentages and proposed to change the allocation of local loop costs to a fixed 25% for all telephone companies, which was approximately the national average allocation. Rural telephone companies responded that the result for many of them would be enormous local rate increases to replace the reduction in interstate revenues.

The rural companies proposed that in addition to the 25% allocation, companies with higher costs should receive an additional separate allocation for the purpose of maintaining local rates at reasonable and affordable levels. This proposal received broad support because it addressed both the complaint that the existing system involved a hidden subsidy and the concern that interstate allocation over 25% should be limited to those cases where the high cost of service would otherwise result in excessive local rates. Thus was born the concept of the Universal Service Fund, which exists to allow carriers the opportunity to recover their legitimate costs, but does not subsidize them by providing more than their costs.

Revisions to universal service support of the 1996 Telecommunications Act

The 1996 amendments to the 1934 Act had the twin objectives of introducing competition into local telephone service and preserving and advancing universal service. The 1996 Act thus required that universal service support would be available to both competitive and incumbent telephone companies and that all carriers providing interstate service must contribute to the support program. Eligibility for receipt of support was restricted to those carriers that provide the services specified for support by the FCC and designated as Eligible Telecommunications Carriers by the relevant state commission (or later, by the FCC if the state does not have jurisdiction over the carrier.)

The FCC was given 15 months to implement the new universal service requirements. In its order of May 1997, the FCC left in place temporarily the existing USF, with some modification, but announced that in the near future it would convert support for non-rural LECs to a system based on forward looking costs as determined by a computerized model, and that it intended to eventually move rural telephone companies to a forward looking cost based mechanism. As for carriers newly eligible for USF, such as CLECs and Mobile Service Carriers, the FCC ruled that these carriers would receive the same per line support as the incumbent LEC with which they compete.

The FCC subsequently adopted a model based system for non-rural ILECs, which provides support only in eight states. After considering the recommendations of a Rural Task Force, the FCC determined that its model could not predict the cost of service of rural telephone companies with sufficient accuracy, and so left the USF for these companies on an embedded cost based system, with some modifications, for a five year period.

The FCC has further revised universal service support mechanisms in two access charge proceedings. In CALLS, the FCC reduced the interstate access charges of price cap carriers substantially, but established a new support fund of $650 million to offset some of the reduction. In MAG, the FCC also reduced the interstate access charges of non-price cap carriers, and established a full offset on a pro-forma basis in another new support mechanism known as ICLS.

Obligation of IXCs to Serve CLEC Customers and Pay Access Charges

In 1999 and 2000, AT&T began a practice of refusing to pay all or a portion of the access charges of many rural (as well as urban) CLECs. After the Commission in *MGC v. AT&T* ordered AT&T to pay a CLEC's access charges because it had not unambiguously cancelled service, AT&T sent letters to many CLECs telling them it would not pay for access and that customers should not be presubscribed to AT&T. In February 2000, RICA filed an request for an immediate order blocking AT&T from refusing to provide service or pay access charges, pending completion of an ongoing investigation into CLEC access rates.

The Commission did not act on RICA's petition. In April 2001, however, it adopted new rules which establish rates at or below which a CLEC could file conclusively lawful tariffs, effective June 20, 2001. For urban CLECs, and rural CLECs competing with rural ILECs, the new FCC rules established a three year transition to the access rates of the ILEC with which the CLEC competes. Rural CLECs competing with non-rural ILECs, are allowed to file tariffs at the high band NECA rate, except they cannot include a carrier common line charge. Where the CLEC rates are tariffed at or below these benchmarks, IXCs cannot refuse to serve the customers of a CLEC in any exchange where it serves customers of the ILEC. An appeal by AT&T of the *CLEC Access Reform Order* has been held in abeyance pending Commission decision on petitions for reconsideration.

In October 2001, the FCC, in response to a referral from a federal District Court hearing a complaint for unpaid access charges, also ruled that IXCs are similarly obligated with respect to access service tariffed prior to June 20, 2001, unless the Commission finds that the rates charged were unlawful. This order was subsequently vacated by the Court of Appeals on the grounds that the Commission found an obligation to interconnect under Section 201(a) of the Act without complying with the applicable procedures in that section.

RICA urges the Commission to promptly resolve its and the other pending petitions for reconsideration As long as the uncertainty as to IXC obligations to provide service and pay access charges at an appropriate rate remain unresolved, the uncertainty as to long term revenue streams is a substantial inhibition to investment in advanced facilities in rural America.

RICA's Request for Enforcement of the CLEC Access Reform Order

Despite the unambiguous clarity of the *CLEC Access Reform Order* with regard to IXC obligations to provide service and to pay for access, some carriers have refused to do one or the other or both under a variety of excuses, or with no excuse. On October 15, 2002, RICA requested the Enforcement Bureau to order AT&T to pay access charges properly tariffed and billed in accordance with the Order but unpaid to a list of RICA rural CLEC members. RICA also requested the issuance of a Notice of Apparent Liability to deter AT&T from its continuing failure to comply with *Order.*

Another RICA member has experienced the refusal of an IXC to provide long distance service to the CLEC's customers because it objected to the intrastate access rates.

RICA Positions on Pending Issues Concerning Universal Service and Access

Reconsideration of the CLEC Access Charge Reform Order

RICA supports the Commission's conclusions to establish benchmark rates, to have a separate benchmark for rural CLECs, and to require IXCs to pay those charges and to serve CLEC customers in exchanges where they serve ILEC customers. RICA has requested reconsideration of the limitation on the rural rate to rural CLECs competing with non-rural ILECs and the exclusion of the carrier common line charge from the allowable rate. Because the *Order's* requirement that IXCs serve CLEC customers has a similar rational to that of the Order vacated by the Court, RICA urges the Commission on reconsideration to follow the full procedures required by Section 201(a) and to find that the IXCs refusal to serve CLEC customers or pay for access provided violates several other sections of the Act as previously specified in RICA's pleadings before the Commission. A copy of an *ex parte* letter of July 18, 2002 to the Wireline Competition Bureau containing RICA's specific suggestions is attached.

Enforcement of CLEC Access Charge Reform Order

RICA has been unable to discern any pattern to the instances in which AT&T has refused to pay CLEC access charges after June 20, 2001. Whether the reasons are simply mistakes, a concerted effort at cash conservation, or continuation of its "self-help" approach, the effect on the rural CLECs is to materially affect their financial strength and reduce their ability to invest in facilities to improve communications for rural America. RICA therefore believes that unless positive enforcement action is taken by the Commission, AT&T will continue to find it profitable to withhold payments until individual complaints are filed and then engage in lengthy negotiations before paying. The Commission should also send a message to IXCs who refuse to serve rural CLEC customers because of objections to the intrastate access rates that these practices will not be tolerated. The U. S. Court of Appeals recently emphasized that, other than in cases involving a "sham" CLEC, interexchange carriers engage in "self-help" at their peril.

Assessment of Universal Service Contributions

A coalition led by AT&T proposed to change the method of determining carriers' contribution from one based on revenue to one based on connections to end users. RICA opposed this proposal because it would have virtually eliminated the long distance carriers' obligation to contribute, despite a statutory provision which requires all carriers to contribute on an equitable basis. The Commission adopted an interim order changing the revenue contribution from lagging to projected and increasing the presumed allocation of wireless carriers' revenues to interstate, while asking for further comment on other issues. RICA believes that the changes adopted in the interim order should address the legitimate concerns raised in this proceeding, and that further action should be deferred until experience has been gained with these changes.

Support for Multiple ETCs ("Portability")

Approximately 20 rural CLECs have obtained ETC designations and are receiving Universal Service Support based on the per line support received by the ILEC. The remaining rural CLECs, however, for the most part meet all the criteria for ETC designation but have not sought designation because the incumbent receives no support so support is not available to a CLEC. Under the present rules where the ILEC is a non-rural company, no matter how high cost the area served by the CLEC is, if either the state-wide average cost as determined by the model, or the ILEC's cost are at or below the benchmark, the CLEC is ineligible for support. Conversely, where the ILEC qualifies for support, but the competitive ETC does not in fact have high cost, it nevertheless receives the ILEC's per line support, thus unjustifiably burdening the contributors to the USF.

The 1996 Act specifies in Section 214 that multiple carriers may receive ETC designation in the same area, and Section 254 provides that only ETCs may receive Universal Service Support. The Commission implemented these provisions by determining that support should be "portable," to all ETCs in the same area, regardless of the technology utilized. The Commission has now asked the Joint Board to evaluate these rules in light of recent developments, particularly the significant growth in support paid. USAC projects that for the First Quarter of 2003, $106,624,022 will be paid to 65 competitive ETCs. Approximately 90% of this amount will go to the top 18 ETCs, all of which are CMRS carriers. To date, the Joint Board has not requested comment.

RICA urges the Commission to abandon the practice of providing support to competitive ETCs based on the ILEC's cost, and instead determine appropriate support for all ETCs based on an assessment of what is sufficient and predictable for at least each class of carrier.

10th Circuit Remand

In *Qwest Corp. v. FCC*, the Court of Appeals remanded the Commission's rules establishing universal service support for non-rural carriers because the Commission had failed to ensure comparability of rates between urban and rural areas. RICA member rural CLECs with ETC designation competing with non-rural carriers are adversely affected to the extent the support provided the non-rural carrier is not "sufficient" to meet the comparability standard of the Act. The Joint Board's recommendation to the Commission to resolve the urban-rural disparity unfortunately is an ill-defined, open-ended ad hoc process which will be unworkable as a practical matter, and will not satisfy the Court or meet the statutory tests of sufficiency and predictability. The Joint Board's recommendation is also flawed in that it proposes to continue using a benchmark based on both urban and rural data, which necessarily skews any comparison between "high" and "average" costs.

Application of Access Charges to Internet Protocol Long Distance Service

AT&T has requested a ruling from the Commission which would, in effect, exempt long distance calls from paying access if they utilize internet protocol for transmission instead of the current prevailing circuit switched technology. This proposal should be rejected as an unwarranted arbitrage scheme. There is no logical basis to provide a free ride for a service simply because it uses a different technology to accomplish the functionally identical task and the use of the local carrier's facility is the same.

CLEC Access Revenues/MAG

Early in 2000 RICA came to the Commission for assistance because AT&T and Sprint were refusing to pay the tariffed access charges or rural CLECs and/or refusing to provide service to CLEC customers. In April 2001, the Commission adopted an order establishing maximum rates for which CLECs would be allowed to file interstate access tariffs. These rates are conclusively presumed lawful, and IXCs are required to provide service to CLEC customers in exchanges where they serve the ILEC's customers. Rural CLECs were allowed to set their tariff rates at the NECA level, except for the carrier common line charge, where they compete with non-rural ILECs. Other CLECs were given a transition schedule to come to the ILEC rates by June of 2004. A subsequent decision ruled that IXCs were required to provide service at tariffed rates prior to the effective date of the new rules, unless, upon complaint, the Commission found the rates unlawful. AT&T appealed both decisions. The Court held the first in abeyance pending Commission action on reconsideration, but ruled in AT&T's favor as to the second decision.

In the meantime, the Commission's MAG order has substantially reduced the NECA rates by shifting recovery to end users and to a new Universal Service Support mechanism, the ICLS. The result is, at least initially, revenue neutral for the NECA pool members, but has the effect of a material reduction in interstate revenue for the rural CLECs which were using the NECA rate.

RICA generally supports the Commission's CLEC Access Reform decision, described above, but has asked for reconsideration of a few critical points. Most significant of these is that RICA believes all rural CLECs should be allowed to set their rates at the NECA level. The corporate identity or structure of the ILEC with which the rural CLEC competes has no relevance to the CLECs revenue requirements. This allowed NECA rate level is only marginally adequate for many rural CLECs, because they are providing service in high cost areas where a rural ILEC's access revenues would exceed the NECA rate because of the operation of the pool, from which the rural CLECs are excluded. For the same reason, the rate levels of large ILECs bear no relation to the costs of a rural CLEC which is not able to average large urban areas into its cost structure.

The irony of the CLEC access rules is that where a rural telephone company purchases an exchange from a large ILEC, and experiences a negative net salvage on the embedded plant while rebuilding to provide modern service, the company will be able to recover at least a significant portion of its new investment through access charges, (and may get some USF relief). On the other hand, if the rural telephone company puts on a CLEC hat and simply overbuilds the outside plant of a neighboring large ILEC's exchange at a much lower total cost, the Commission's rules only allow it to charge access rates that recover a substantially lower proportion of its total cost.

RICA urges the Commission to act promptly on its reconsideration request, pending since May 1991, and in so doing to strengthen the order so as to address satisfactorily the concerns of the Court of Appeals.

Uniform Intercarrier Compensation

The Commission is considering two alternative forms of "Bill and Keep" as potential replacements for the current access and reciprocal compensation arrangements. The proposals have the superficial attractiveness of means to reduce or eliminate arbitrage, but fail to recognize that without the opportunity to recover a rational portion of the high costs of serving rural areas, rural CLECs would have to increase local rates substantially beyond the ability of many subscribers to pay. Further, such rate increases by small rural CLECs would not have to be matched by their large ILEC competitors which would retain their ability to average rates state-wide over rural and urban areas. The Commission should focus on eliminating the arbitrage in the present system, by, *inter alia*, eliminating its rules that promote arbitrage, such as the ESP exemption. Additionally, there is no point to creating the substantial disruption of conversion to a bill and keep system for the interstate jurisdiction only, since that would not solve the arbitrage problem.

Conversion of CLECs to ILECs

Section 251(h) of the Act permits the Commission to reclassify a CLEC as an ILEC where it has substantially replaced the ILEC in the community and occupies a place in the market similar to an ILEC. To date, no CLECs have been reclassified. RICA urges the Commission to clarify the conditions applicable to such conversions.

Conclusion

Rural CLECs have demonstrated their ability to meet the goals of Congress and Commission by substantially improving communications service, including the investments required to provide broadband service, in rural areas long ignored and underserved by large ILECs. Their ability to continue to provide and expand the availability of advanced services is seriously at risk under the current regulatory structure, which brings rural CLECs under the same rules as those competing for business customers in urban areas. The remarkable expansion of telephone service into rural areas ignored by the large carriers following World War II was made possible by a fortuitous combination of the availability of government capital and FCC rules that enabled rational cost recovery allocation between local and long distance service.

Today rural areas in large ILEC territory are more often underserved, rather than unserved, but the same principles apply: without adequate interstate revenue streams, the high cost of serving low density areas cannot be recovered, at least with reasonable local rates comparable to urban local rates. If rural CLECs were allowed to follow the same rules as rural ILECs, or the rules applicable if they had purchased rather than overbuilt an area, there would be much greater progress toward the nation’s goal of having advanced services available everywhere.

ORIGINAL

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 18, 2002

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

Re: Written Ex Parte Presentation of the Rural Independent Competitive Alliance in CC Docket No. 96-262, *Seventh Report and Order*

Dear Ms. Dortch:

Attached please find a written *Ex Parte* Presentation—a letter dated today to Jeffrey Dygert from the Rural Independent Competitive Alliance (RICA), with copies to Dorothy Attwood and Jeffrey Carlisle, relating to the above-referenced proceeding. This transmittal letter 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 contact our office.

Respectfully submitted,

Clifford C. Rohde
Counsel for RICA

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July 18, 2002

Jeffrey Dygert
Deputy Division Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-262, *Seventh Report and Order*

Dear Mr. Dygert:

As you are aware, on June 14, 2002 the U.S. Court of Appeals for the District of Columbia Circuit vacated the Commission's October 2001 *Declaratory Ruling* which was issued pursuant to a primary jurisdiction referral from a civil action brought by a group of CLECs to recover unpaid access charges by AT&T and Sprint. The court found that the Commission could not require AT&T to purchase access services from CLECs when an end user requested AT&T long distance service on the basis of the "reasonable request" provisions of Section 201(a), but must also follow the procedures specified in the second clause of that section. Because this decision has substantial relevance to the pending reconsideration of the *Seventh Report and Order* in CC Docket No. 96-262 ("*CLEC Access Reform Order*"), which AT&T has also appealed, the Rural Independent Competitive Alliance ("RICA") provides these additional comments for the Commission's consideration.

The *Declaratory Ruling* held that IXCs were required by the "reasonable request" clause of Section 201(a) to originate or terminate traffic at presumptively lawful access rates. The Commission explicitly found that this conclusion was consistent with the *CLEC Access Reform Order*. That order, in paragraphs 88 to 97, addressed directly the question of "whether and under what circumstances an IXC can decline to provide service to end users of a CLEC," the same question raised by the *Advamtel* court. The Commission's conclusion that IXCs are required to serve the end users of a CLEC that is charging rates at or below the benchmark was based entirely on the "reasonable request" clause of Section 201(a). The Commission explicitly declined to address the applicability of Section 214(a), and did not mention other provisions of Title II.

In view of this situation, RICA recommends that on reconsideration of the *Seventh Report and Order*, the Commission:

(1) Explain that although the D.C. Circuit refused to consider the argument on appeal of the *Declaratory Ruling*, the entire record in that proceeding, as well as AT&T's earlier request for a ruling and the record in CC Docket 96-262, demonstrate that AT&T was already interconnected with the CLECs, was exchanging *both* originating and terminating traffic with them, and that there was no through route established because AT&T charged its customers for the entire end-to-end communication for calls either originating or terminating at a CLEC customer. The very existence of the *Advamtel* civil suit for recovery of charges for access provided, which led to both the *BTI* decision and the *Declaratory Ruling* of the Commission, demonstrates that interconnection exists and there was no reason for the Commission to proceed under the second clause of Section 201(a).[1]

(2) Explain that even if, *arguendo*, an order under the second clause of Section 201(a) is/was required in order to find that IXCs have a duty to serve the end user customers of CLECs in areas where they serve ILEC customers, the extensive proceedings before the Commission constituted the hearing required, and that the Commission necessarily made a public interest finding. Specifically, in paragraph 93 the Commission stated "universal connectivity is an important policy goal that our rules should continue to promote" and "...any solution to the current problem that allows IXCs unilaterally and without restriction to refuse to terminate calls or indiscriminately pick and choose which traffic they will deliver would result in substantial confusion for consumers, would fundamentally disrupt the workings of the public switched telephone network, and would harm universal service." These conclusions necessarily constitute a finding that the interconnection required is "necessary or desirable in the public interest."

(3) In *MGC v. AT&T*, the Bureau stated quite clearly that "AT&T remains subject to a broad variety of statutory and regulatory constraints...which include, without limitation, sections 201, 202, 203 and 214 of the Act and section 63.71 of the Commission's rules."[2] The Commission should, on reconsideration, address and conclude, consistent with the information and arguments on the record set forth by RICA and others, that AT&T's refusal to serve CLEC customers also violates each

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1 See, e.g. Reply Comments of RICA, et al., CC Doc. No. 96-262, June 29, 2000, which demonstrated that AT&T either explicitly or constructively ordered access service from CLECs, actively marketed its originating service to CLEC customers, and billed and collected for its service. This set of facts bears no resemblance to the scenario analyzed by the court.

2 *MGC Comm. Inc. v. AT&T Corp.*, 14 FCC Rcd 11647, aff'd 15 FCC Rcd 308 (1999)

of the following substantive provisions of the Act. The violations of these specific provisions of the Act are in addition to the violation of AT&T's obligation as a common carrier to serve all persons indifferently.

(a) Refusal to serve CLEC customers is an unjust and unreasonable practice in violation of Section 201(b). As RICA has previously argued, action by IXCs which results in denial of access by rural subscribers to the modern, reliable and advanced services which the rural CLECs have made available is an unjust and unreasonable practice; [3]

Refusal by an IXC to provide service on the basis of its belief that access rates of the end user's local carrier are too high is also unjust and unreasonable because it violates the Commission's frequently expressed prohibition on "self help";[4] and

Refusal to provide service to the customers of some CLECs is also unjust and unreasonable in the context of an IXC, such as AT&T, which as a CLEC itself stands to gain a competitive advantage by driving other CLECs out of business. This is particularly true where the AT&T CLEC itself has access charges which equal or exceed many of the CLECs about which AT&T complains.

(b) Refusal to serve CLEC customers is an unjust and unreasonable discrimination in the provision of like communications service, and creates an unreasonable preference favoring customers of other carriers and subjects the customers of CLECs to undue and unreasonable prejudice and disadvantage in violation of Section 202(a)

(c) Refusal to serve CLEC customers where access is available from the CLEC violates Section 203(c) of the Act, at least through July 31, 2001 because its tariff offered service wherever access was available;[5] and that the refusal

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[3] RICA Comments, AT&T and Sprint Petitions for Declaratory Ruling Regarding the Legality of Terminating or Declining Access Services Order of Constructively Ordered, and the Requirements for Effecting Such Termination, CCBCPD No.01-02, Feb. 20, 2001 at 10. ("RICA Declaratory Ruling Comments")

[4] *See, e.g., MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647, *aff'd.*, 15 FCC Rcd 308 (1999).

[5] AT&T's tariff stated: "Service is furnished subject to the availability of the service components required. In the absence of access arrangements between the company and the access

thereafter was and is contrary to the holding out described on AT&T's website, in violation of Section 201(b).

(d) Cancellation of service to CLEC subscribers, whether explicitly, or constructively by refusing to pay for access, without having obtained certification of the public interest, convenience and necessity violates Section 214(a) of the Act. AT&T's contention that certification is not required is contrary to express holdings of the Commission which RICA previously has cited at length.[6]

(e) If IXCs are permitted to pick and choose which customers they will serve based on the access rates of the customer's local exchange carrier, they will effectively be able to avoid their obligations imposed by Section 254(g) to provide uniform toll rates. The principle advocated by AT&T that it can discontinue service at its choice without Commission permission because it does not like the access rates charged would, if accepted by the Commission, be applicable equally to the customers of rural ILECs and CLECs. Section 254(g) was adopted by Congress in recognition of the fact that access costs are higher in some areas than others and thus represents a deliberate policy choice to require IXCs to charge rates which cover their average access costs, not just their lowest costs.

RICA would be pleased to discuss the foregoing points with you in detail.

Sincerely yours,

David Cosson /ccr

David Cosson
Attorney for Rural Independent Competitive Alliance

cc: Secretary
Dorothy Attwood
Jeffrey Carlisle

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provider at a particular station, a Customer may be unable to place calls from or to the affected Station." As RICA has pointed out, these words are at best ambiguous and must be construed in favor of a customer requesting service. No customer can reasonably be expected to understand that this wording could be legally construed to reject the access arrangements available to it from the customer's LEC. The Commission has also found that a tariff that is not clear and explicit violates Section 201(b). *Halprin, Temple, Goodman & Sugrue v. MCI*, 13 FCC Rcd 22568, 22576 (1999).

[6] RICA Declaratory Ruling Comments at 6-8 (citing *Chastain v. AT&T*, 43 FCC 2d 1079, 1085 (1973), *recon. denied*, 49 FCC 2d 749 (1974).