

K R A S K I N, L E S S E & C O S S O N, L L C  
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

October 28, 2003

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

Re: Notice of Ex Parte Presentation  
of the Rural Independent Competitive Alliance in  
CC Docket Nos. 96-262, 96-45; 98-77; 98-166;  
00-256; 01-92; WC Docket No. 02-78

Dear Ms. Dortch:

On October 24, 2003, David Cosson met with Matthew Brill of Commissioner Abernathy's office to discuss concerns of the Rural Independent Competitive Alliance (RICA) related to its petition for reconsideration of the Commission's CLEC Access Charge Reform Order in CC Docket Nos. 96-262, and related matters.

The views expressed by Mr. Cosson substantially tracked the points raised in the attached handout, which was presented to Mr. Brill during their conversation.

This *ex parte* notice is being filed electronically pursuant to Commission rules 1.1206(b) and 1.49(f).

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

Respectfully submitted,

/Clifford C. Rohde/  
Clifford C. Rohde  
Counsel to RICA

Enclosure

Cc: Matt Brill (via email)



RICA Administrative Office  
2579 Western Trails Blvd., Ste. 100  
Austin, TX 78745  
866/472-1209 (Toll Free)  
512/892-6966 (Fax)  
www.rica-alliance.org

Legal Counsel  
Kraskin, Lesse & Cosson, LLC  
2120 L Street, NW, Ste. 520  
Washington, DC 20037  
202/296-8890 (Tel)  
202/296-8893 (Fax)  
rica@kictele.com

## **RECONSIDERATION OF THE COMMISSION'S CLEC ACCESS CHARGE REFORM ORDER (FCC 01-146) AND RELATED MATTERS**

### **1. THE COMMISSION MUST ADDRESS THE ISSUES RAISED BY THE 2002 D.C. CIRCUIT DECISION VACATING THE COMMISSION'S DECLARATORY RULING RELATING TO CLEC ACCESS BEFORE JUNE 20, 2001**

The U.S. Court of Appeals for the District of Columbia Circuit vacated the Commission's Declaratory Ruling (FCC 01-313) 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.

- ◆ 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 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); and
  - 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 which has decimated the urban CLEC industry.

**2. THE COMMISSION SHOULD RULE FAVORABLY ON RICA'S OTHER RECONSIDERATION REQUESTS. THE COMMISSION SHOULD:**

- ◆ Allow rural CLECs to recover a reasonable proportion of their costs from the Interstate jurisdiction, comparable to that of rural ILECs, otherwise competition will not expand in rural areas and may not be able to continue.
- ◆ Revise eligibility for the rural benchmark to include those rural CLECs that compete with "price cap carriers."
- ◆ Revise the eligibility criteria for the rural benchmark so that a CLEC that extends its lines into a disqualifying non-rural area loses 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, but the MAG Order (FCC 01-304) substantially reduced the NECA rate by shifting carrier common line recovery to a universal service mechanism (ICLS) not available to rural CLECs. As a result, rural CLECs' recovery of costs of providing interstate access is inadequate. To mitigate this inadequacy, the Commission should both expand the rural benchmark as described above and revise the Universal Service rules to provide for support based on a rural CLEC's own costs.

**4. UNIFIED INTERCARRIER COMPENSATION**

RICA urges the Commission not to adopt a "bill and keep" plan. 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 principles of affordability and comparability with urban rates.

**5. 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.