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FILED ELECTRONICALLY

December 2, 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 No. 96-45

Dear Ms. Dortch:

On December 1, 2003, David Cosson and I spoke via telephone with Federal-State Joint Board ("FSJB") member and Montana Public Service Commission Chairman Bob Rowe, along with FSJB state PSC staff appointees Joel Schifman and Mike Lee, to discuss concerns of the Rural Independent Competitive Alliance ("RICA") with respect to the Universal Service "portability" proceeding currently before the FSJB and Federal Communications Commission ("FCC" or "Commission").

We summarized points we have made in comments and reply comments, as well as at the FSJB Denver forum held last July. At root, RICA strongly believes that the Commission's "portability" rules are not rational as applied. By dictating that a competitive eligible telecommunications carrier ("ETC") receive only as much universal support on a per line basis as that received by the incumbent carrier against which it competes, the current rules uncouple the availability of support from the need for support. The portability rules create the almost invariable situation where competitive eligible telecommunications carriers ("ETCs") receive either too much or too little USF support.

Competitive ETCs ("CETCs") receive too much support when their costs do not justify the support received. This windfall USF support disadvantages incumbent ETCs, who receive support based on established need. Where CETC support is too little, competitive carriers are sent economic signals not to invest in remote, high cost areas that are often left underserved by the incumbent carrier. The support that any ETC receives should properly be based on the network costs of the carrier, or

class of carrier, itself receiving support. Such would enable RICA members to receive support for the legitimate costs of operating a network in high cost areas, and to better advance the goals set out in Sections 254 and 706 of the Telecommunications Act of 1996.

RICA believes that the Joint Board could and should proceed to establish such a support principle without first determining precisely how to measure the costs of CETCs or classes of CETCs. We agreed during the call that the FSJB should properly retain referral on that secondary matter. Once the principle is established, the FSJB and Commission would determine in a related, subsequent proceeding how best to implement the new support paradigm. In this context, RICA members would not object to reasonable cost study requirements resulting from such a change in the rules. We stressed, however, that should the Commission establish cost models (which are inherently difficult to establish with respect to rural study areas), any CETC should have the option of departing from the model with the presentation of a legitimate cost study.

Some carriers may object to a requirement to prepare and present a cost study, or to provide justification for variance from a cost model. Every carrier should be prepared, however, to justify the need for support. The Universal Service Fund (“USF” or “Fund”) was established to ensure access to basic services, and rational rules require no less and no more. To establish an appropriate cost-based support mechanism, the FSJB could consider both embedded and forward-looking cost approaches, and the development of a simplified means of determining costs similar to the average schedules available to incumbent local exchange carriers (“ILECs”). Any cost model developed must validate outputs as well as inputs.

Any changes to the rules fashioned after RICA’s recommendations that can be implemented immediately should be. Immediate implementation would facilitate the entry of RICA members and other actual or potential rural CLECs into the remote, high cost markets that large ILECs continue to ignore. Such would help the individuals in these areas bridge the so-called digital divide and advance the Universal Service principle found in Section 254(b)(2) of the Communications Act (“Act”) of bringing access to advanced services to all Americans.

During the call, we also highlighted the problems inherent to the “primary line” proposals aimed at controlling Fund growth. Such proposals do not adequately address the overwhelming administrative burdens that would be created. They also fail to stem the prospect of abuse by carriers improperly compelling customers to declare such carrier, or by carriers improperly declaring themselves, the provider of the “primary line.” It would be virtually impossible to determine 1) who the primary customer is in many households, and 2) whether multiple providers are receiving support for the same customer. Further, primary line proposals do not adequately address the fact that, as ETCs, carriers must be prepared to establish a network capable of serving all potential subscribers in the service area. While a “primary line” requirement may appear to be a simple fix to control Fund growth, there is simply

no way to ensure that such a policy could be implemented or enforced fairly and adequately, absent the application of significant time and resources unavailable to regulators now or in the foreseeable future.

In addition, RICA does not support a cap on USF support corresponding to what the ILEC receives on a per line basis. RICA members' costs of providing a network to reach (potentially all) subscribers in an area—which the USF high cost programs require—are high when compared to the state-wide average costs of the large price cap ILECs against which they compete. Nevertheless, because RICA members most often quickly earn a majority of customers, per line costs are not as high as they would be for a CLEC that slowly accumulates a small market share. Because of that fact and that the overall number of potential wireline rural CLEC lines is relatively small nationwide, RICA does not believe that allowing wireline rural CETCs to receive support based on their own costs would substantially contribute to an increase in high cost USF funding requirements. The 1Q 2004 projections of the Universal Administrative Company (“USAC”) indicate that landline CETCs will continue to receive only about three percent of all CETC support.

Participants posed a question regarding re-opening the “window” to rural local exchange carrier (“LEC”) disaggregation of high cost support (see 47 C.F.R. § 54.315). While RICA has no stated position, some of its members compete against mid-size rural LECs. Such LECs may seek to utilize such a rule to disaggregate support away from areas where they are experiencing competition from rural CLECs, without any legitimate basis in cost differentials. RICA would not, therefore, support additional opportunities to disaggregate without regulatory review. Importantly, however, adoption of RICA's recommendation to base support on the recipient carrier's costs would effectively eliminate the competitive gaming that disaggregation can potentially facilitate while support continues to be based on the costs of the incumbent ETC.

When asked whether the FCC should require more rigorous annual state reviews of ETCs, we again noted that RICA has stated no position. Nonetheless, RICA has previously described the conceptual difficulty of tracking the ultimate disposition of any one dollar of USF support that any one carrier receives and the lack of guidance in the Commission's rules regarding how to track support expenditure. Again, adoption of RICA's proposal to base support on a carrier's own cost could move all CETCs toward the situation of the rural ILECs whose support is pegged to expenditures they have already made. RICA would wish to review and provide comment on any proposal that seeks to define the reasonable expenses associated with the receipt of USF support.

Responding to an inquiry, we reiterated RICA's position that it has no quarrel with the concept of eligibility of wireless carriers for Universal Service support. We continue to note, however, that wireless mobile service differs from wireline service in material respects. Wireless services offer subscribers the benefits of mobility, different risks of service interruption and, at present, different pricing options. At the same time, when compared to landline service, wireless service is subject to less ubiquity of service availability, more frequently dropped calls, less consistent transmission quality, higher

probability of busy hour blocking, lower data speeds, and restrictions on use in health care facilities, to name a few important distinctions. Given these differences, the FSJB and Commission should develop specific Universal Service objectives for mobile ETCs and a support mechanism consistent with encouraging wireless carriers to meet those objectives. Such mechanism should be appropriate for the technology, regulatory status and industry structure of wireless carriers, and provide support where needed, but not provide a windfall.¹

While RICA has no stated position on point, we discussed generally whether there should appropriately be limits placed on the number of CETCs designated in any particular study area. We acknowledged the appeal of the proposal as a means of limiting Fund growth. We indicated that the value of any such proposal should be gauged not only by its impact on growth to the USF, however, but also on the experience of end users. The Universal Service principles would be served where rural CLECs receive USF support to provide quality basic and advanced services in remote, high cost areas in which the incumbent LEC has failed to upgrade existing facilities and is providing inferior service. Any rule limiting designation of additional CETCs carries a risk that it may protect an incumbent that has failed to provide “comparable” service to its subscribers. Carriers should always be permitted to attempt to demonstrate the public interest benefits of their prospective designation as a CETC. Further, Section 214(e)(2) of the Act may not permit an explicit proscription of the designation of more than one ETC in a particular service area. Study of this issue would properly be before the FSJB.

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

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

Respectfully submitted,

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

cc: Chairman Bob Rowe, Montana Public Service Commission (via email)
Joel Schifman, Maine Public Utilities Commission (via email)
Mike Lee, Montana Public Service Commission (via email)

¹ When asked, we indicated that RICA has stated no position on whether transport, of which landline ETCs make use, is a proper ETC expense. In addition to observations contained in the preceding paragraph, we noted that, unlike mobility, transport is not a service offered to end users. Rather, it is a functionality of the network that ETCs must utilize to provide supported services to end users.