Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

COMMENTS OF GVNW CONSULTING, INC.

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<u>Executive Summary</u>

Rural carriers are different than non-rural carriers and face a different paradigm that must be considered in any policy proposal. GVNW does not support the proposals made by the Intercarrier Compensation Forum (ICF) to implement what amounts to a bill and keep regime, as it would create severe impacts on rural carrier customers. We currently support the Rural Alliance principles that are geared to meeting the needs of rural Americans. In its efforts to achieve its stated goals, the Commission must exercise caution to not be pressured or extorted to adopt any proposal in its entirety without first conducting a prudent analysis that ensures that the needs of valid constituencies are met.

In simplest terms, with respect to the rural interests, the ICF plan is a Trojan horse that has been delivered to the Commission's castle, amidst great fanfare. While purporting to include companies that are rural, there is simply no representation of the nation's smallest carriers and most remote service territories. A foundational test of whether a proposal is viable hinges on whether the proposal creates a paradigm where all users pay for their use of the network. The ICF plan fails to meet this test.

Establishing a zero rate for originating access creates several public policy consequences, as neither the IXC nor the customer has a good reason to limit its use of the local circuit. The deleterative consequences of such an approach include the creation of new forms of arbitrage, as the IXCs (or the portion of the acquiring company that uses those assets) are able to use the network for free.

The ICF plan misallocates costs. In the hypothetical ICF world, the carrier that receives revenue for a call avoids paying for its network usage due to the proposal to eliminate originating access and pay for transport only to the edge of the terminating carrier's network. ICF attempts to ignore the simple fact that there is a cost to maintaining a local network, and is at conflict with Rural Alliance principles 1, 2, and 3.

A careful analysis of the ICF proposal helps to explain the interest that the RBOCs have exhibited in their weakened IXC opponents. With access charges virtually eliminated for interexchange carriers, the proponents of the ICF plan seek to improve the future business case of their latest acquisitions.

The urban rates of the larger carriers reflect an EAS component in most cases. While calling scope issues still remain a part of the debate, at a minimum there is a need to include as a part of a qualifying charge in the benchmark calculation any rural carrier EAS charges.

The block grant proposal offered by the NARUC is deficient in several respects. First and foremost, Section 254 mandates that universal service support be "specific, predictable, and sufficient." Implementing a block grant approach to distributing federal universal service funding allows state commissions with such a large degree of discretion so as to render the achievement of the "predictable" tenet impossible. Similarly, the metric of "sufficiency" may well not be achieved. In order for RLECs to continue to deploy rural infrastructure in the highest-cost areas, reliable access to support funding must continue throughout the investment cycle.

Some parties to this proceeding will undoubtedly cite the portion of the Verizon TELRIC case where the Court stated that Congress intended to transition from familiar public utility models "in favor of novel ratesetting" and choose to ignore the completion of the Court's statement that contained the important phrase "short of confiscating the incumbent's property." The Court left open a potential takings challenge against any particular set of rates that did not provide the carrier with a compensable return.

If the Commission decides to take a walk down the pothole-filled road to preemption, it is likely to stub its regulatory toe on the Louisiana precedent.

A process should be developed to identify "phantom traffic" in order to ensure that carriers are paying appropriate charges under current rules and regulations. We submit that any attempts by carriers to strip off or alter billing information is by definition illegal and should be addressed by the Commission initiating action via ordering all carriers to comply with existing network billing obligations established by the recognized industry billing forums.

The ICF plan is not a change in the technological paradigm, but rather a not so clever attempt to receive services without paying a fair price. It is still the LEC that would be providing the access to customers of another company (in some cases a combined RBOC/IXC megacompany) just the same as under the current rules, but under the proposed rules would not receive direct compensation for that functionality. Our research indicates that in no other business would retailers be allowed to service customers while using the property of another company without compensating the company providing the resources.

We recommend that the Commission develop rules and regulations related to the provision of transit services under reasonable rates, terms, and conditions. This request emanates from the fact that the ICF proposal for transiting is at best transitory in nature. We are concerned with the information found in reviewing the ICF Brief, Appendix A, footnote 29 that states that the ICF reserves the right to argue that those carriers are not required to offer tandem transit service. Without the Commission establishing a reasonable set of parameters, rural carriers will be required to pay whatever price an ICF member chooses to extort, or perhaps not even be able to obtain the service.

The provision of telecommunications in the highest cost areas of the country is inherently risky and capital intensive. In evaluating intercarrier compensation cost recovery issues, the Commission should not attempt to ignore its consistent record evidence of the last decade that rural costs are different. In evaluating non-embedded cost alternatives for rural carriers, the Commission should heed its experience from the Rural Task Force evaluation of a hypothetical model. In short, rural rate-of-return carriers have specific cost recovery needs.

In 2005, rural is still different. What does this mean for a review of the basis of calculating rural carrier intercarrier compensation? The Commission should follow for rural carrier intercarrier compensation the policy differentiation it used in adopting the Rural Task Force rules for universal service. Simply stated, the prescription to keep communications in rural areas viable is to continue the principles that serve as the foundation of the earlier Rural Task Force rules.

The Commission should reject once and for all the proposal to calculate rural carrier intercarrier compensation on a bill and keep basis. The existing system of cost recovery consisting of three equally important components of access charges, universal service support, and local rates is the only approach available to the Commission that will enable it to avoid valid claims of confiscation. Further, it is necessary to have Joint Board action that could permit rural carriers to recover any shortfall from access rate unification in order for rural carriers to meet their universal service obligations.

Additional SLCs should be minimized with an appropriate balance between reduced access and increased universal service support. The Commission has previously recognized in the MAG Order that recovery of network-related costs should be comprised of a combination of local service revenues, access revenues, and universal service support. The ICF proposal to increase the SLC caps up to $10 per line per month will not result in rural end-user charges being comparable with urban rate levels.

Any new intercarrier compensation regime should not only recognize existing paradigms, but should also anticipate changes over at least the near term, if not the long term. Thus, the Commission must focus in part on the transition from a circuit-switched platform to a packet-switched world. The issues that require attention range from public safety issues to issues related to compensation and confiscation.

The Commission also rejected the argument that VoIP traffic should be exempt from access charges on the basis of the level of the charge (AT&T Order, paragraph 18). As long as voice-over-broadband providers terminate their calls over the public switched network, they are using the network in the same manner as an interexchange carrier (or division of a vertically-integrated RBOC) and create the same types of costs that must be borne by the provider of the PSTN and should continue to be recovered through intercarrier compensation.

As the Commission addresses future issues, we submit that the Commission must uphold the basic tenet that carriers are entitled to compensation for the use of their facilities.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. The purpose of these comments is to respond to the Further Notice of Proposed Rulemaking (FNPRM) released by the Commission on March 3, 2005.

In this instant FNPRM, the Commission states at page 2 that it "begins the process of replacing the myriad [of] existing intercarrier compensation regimes with a unified regime designed for a market characterized by increasing competition and new technologies." We participated actively in the initial April 2001 Notice of Proposed Rulemaking (NPRM) proceeding and applaud the Commission's current efforts to address the myriad of challenges facing intercarrier compensation today.

As we will demonstrate in this comment filing, rural carriers are different than non-rural carriers and face a different paradigm that must be considered in any policy proposal. GVNW does not support the proposals made by the Intercarrier Compensation Forum (ICF) to implement what amounts to a bill and keep regime, as it would create severe impacts on rural carrier customers. We currently support the Rural Alliance principles that are geared to meeting the needs of rural Americans.

We respectfully submit these comments for the Commission's consideration, and have organized our comments to mirror the structure and organization of the Further Notice. We have also provided several exhibits that serve to demonstrate the different challenges facing rural carriers.

GOALS OF INTERCARRIER COMPENSATION REFORM

In the instant FNPRM, the Commission has established five laudable goals that any proposed intercarrier compensation reform should address. In short, the Commission seeks reform that promotes economic efficiency, preserves universal service, is competitively and technologically neutral, addresses network interconnection issues, and meets any legal authority hurdles.

We believe that appropriate goals also include that the reform plan should minimize arbitrage opportunities and be resistant to gaming, as well as enable the ubiquitous deployment of broadband facilities by the private sector in rural America.

In its efforts to achieve its stated goals, the Commission must exercise caution to not be pressured or extorted to adopt any proposal in its entirety without first conducting a prudent analysis that ensures that the needs of valid constituencies are met. With respect to rural concerns and needs, we support the eight principles (*in italics*) espoused by the Rural Alliance:

1) *Intercarrier compensation rates should be uniform and cost-based.* Rates should be applied to both originating and terminating traffic and be developed based on embedded carrier costs, unified at a common rate level.

2) *Current interconnection points and rules should be maintained*. Interconnection should continue to occur within the network area of a rural local exchange carrier.

3) *The retail service provider (RSP) should pay for the network usage it creates*. A compensation obligation for the RSP paying the local exchange carrier exists under any technological platform or protocol language.

4) *Transiting services should be available at just and reasonable rates and conditions*. Retention of market power equates to retention of market oversight.

5) *Local service benchmark rates should be imputed in revenue replacement funds*. A properly initialized benchmark rate will prevent unwarranted subsidy of low local service rates through a national mechanism.

6) *Revenue replacement funds should be based on net revenue losses*. This principle envisions reform that maintains current federal support mechanisms for carriers, and ties new mechanisms to the local service benchmark rate test.

7) *Current universal service collection mechanisms are becoming unsustainable*. It is a priority for the Commission to address reform of the federal universal service collection mechanism, seeking the broadest base supportable under the law.

8) *To protect rural customers, there needs to be additional oversight of IP interconnection and infrastructure-based universal service*. Rural carriers should be permitted the opportunity to interconnect with IP backbone providers on a non-discriminatory basis. Federal universal service policy must be focused to providing reasonable incentives for rural infrastructure deployment.

How does the ICF proposal compare to these principles? In simplest terms, with respect to the rural interests, the ICF plan is a Trojan horse that has been delivered to the Commission's castle, amidst great fanfare. While purporting to include companies that are rural, there is simply no representation of the nation's smallest carriers and most remote service territories. As shown in Exhibit A, we compare graphically one of the ICF examples of a rural carrier, Valor, to a sample of rural carriers in the western United States. In Exhibit B, we compare, using USAC loop data from the second quarter of 2005, data contrasting Valor's study areas for New Mexico (45,408 and 48,571 loops), Oklahoma (114,674 loops), and Texas (312,935 loops) to the average size of the 1,349 rural ILEC study areas in the USAC data (average rural loop size equals 15,633). Exhibit C compares in a similar manner to Exhibit A the ICF participant GCI to some of the carriers in Alaska that serve the remote portions of the state.

In Exhibit D, we calculate several distributions of loop size for the rural study areas, reflecting that the average size of the first 90% of the rural study areas is approximately 4,756 loops. As shown in these exhibits, while Valor and GCI are indeed smaller than the Fortune 500 behemoths[1] that shared the ICF negotiation table, they are considerably larger than the truly rural segment of providers.

PROPOSALS FOR INTERCARRIER COMPENSATION REFORM

Each party that has developed a plan for consideration by the Commission is assisting in the important debate on intercarrier compensation reform. For purposes of this comment filing, we are utilizing the following versions of plans submitted:

ICF – Ex parte brief supporting its legal brief filed with the Commission on October 5, 2004

National Association of Regulatory Utility Commissioners (NARUC) – Proposal Version 5 filed with the Commission on March 1, 2005

While some of the specific issues related to legal requirements, network interconnection matters, and cost recovery issues are discussed later under the topical headings that mirror the FNPRM, we offer an initial evaluation of the ICF and NARUC plans, after a brief discussion of the importance of maintaining originating access charges. A foundational test of

[1] Fortune, April 18, 2005, ranks SBC as number 33 ($41B), AT&T as number 56 ($31B), and Sprint as number 67 ($27B) of its Fortune 500 companies. (Annual revenue shown parenthetically to nearest BILLION)

whether a proposal is viable hinges on whether the proposal creates a paradigm where all users pay for their use of the network. As you will see in the discussion below, the ICF plan fails to meet this test.

Originating access remains appropriate given the requirements borne by certain local exchange carriers

Under current Commission rules, rural local exchange carriers (RLECs) are required to provide equal access to interexchange carriers,[2] which enable the IXC to establish a retail relationship with the RLEC's subscriber. In addition, RLECs are required to perform the call originating functions for services for which they are not the retail service provider such as 800 service and 10xxx. With these requirements in place, it is reasonable to continue to reflect originating compensation for such calls. To do otherwise would deprive a carrier the ability to recover an appropriate portion of applicable network costs from intercarrier compensation.

Establishing a zero rate for originating access creates several public policy consequences, as neither the IXC nor the customer has a good reason to limit its use of the local circuit. The deleterative consequences of such an approach include the creation of new forms of arbitrage, as the IXCs (or the portion of the acquiring company that uses those assets) are able to use the network for free. By requiring all users of the network, not just the end-user subscribers to pay for use of the network, resources are allocated efficiently

[2] Notwithstanding the spate of industry mergers, the equal access requirement remains for rural carriers.

as demand will be driven based on the cost of using the network. This concept is supported by the NASUCA's statement[3] that any plan for intercarrier compensation reform must recognize that a carrier that "originates, transits or terminates traffic on the network of another carrier imposes costs on that carrier. As a result, the cost of intercarrier compensation cannot be zero."

The ICF plan suffers from fatal flaws in both architecture and in its focus to densely-populated urban areas

While it may be argued that the ICF[4] plan addresses certain urban issues, it does not meet even a threshold test of addressing rural carrier issues. The elimination of the current access charge regime and drastic reduction in reciprocal compensation rates is a radical proposal. The ICF plan is deficient in several substantive respects. It does not solve the problem of arbitrage, but merely changes its face. The ICF proposal would misallocate resources through false economic signals and discriminates against non-RBOC classifications of carriers. The ICF proposal sheds light on the recent flurry of RBOC-IXC merger activity with its tendentious treatment of IXCs. The ICF proposal conveniently ignores the high cost of long transport routes in certain rural markets.

[3] National Association of State Utility Consumer Advocates (NASUCA) Advocates Intercarrier Compensation Proposal, CC Docket No. 01-92, filed December 14, 2004, page 1.
[4] While we concur with Commissioner Copps' February, 2005 characterization of bill and keep as a "theoretical construct", it is a very real threat to affordable communications for rural customers.

The problem of arbitrage/gaming is exacerbated under the ICF proposal. One likely example is in the opportunity created for an ISP's interexchange carrier in a zero originating access charge and "edge" environment to shift cost burdens to the ILEC. At present, ISPs serve their dial-up customers by establishing a point of presence (POP) within each local calling area, typically via the placement of modem banks. By removing the originating charge, the ISP would no longer need to maintain the modem banks. Instead, the ISP could create an affiliated IXC and establish a POP at the retail customer's LEC tandem office. The next move in this game is to request that its customers place an interstate toll call to reach the Internet through the affiliated IXC. The ISP avoids the cost of the modem banks and the local business lines, and would in turn shift its retail cost burden to the LECs local switch and tandem investment.

The ICF plan misallocates costs. In the hypothetical ICF world, the carrier that receives revenue for a call avoids paying for its network usage due to the proposal to eliminate originating access and pay for transport only to the edge of the terminating carrier's network. ICF attempts to ignore the simple fact that there is a cost to maintaining a local network, and is at conflict with Rural Alliance principles 1, 2, and 3 (as described at page 10) and NARUC principle III. B. that "intercarrier compensation should be designed to recover an appropriate portion of the requested carrier's applicable network costs."

The ICF plan discriminates in several respects. Under the ICF plan, exchange carriers are designated as either hierarchical or non-hierarchical. Hierarchical carriers have created a new form of access for themselves and proposed the virtual elimination of access revenue streams for non-hierarchical carriers. The ICF plan purports what has been designated as a "rural carve out" which is merely a recognition that current rules require interconnection points "at any technically feasible point within the carrier's network."[5] The ICF treats carriers that use centralized equal access different than those that do not.

A careful analysis of the ICF proposal helps to explain the interest that the RBOCs have exhibited in their weakened IXC opponents. With access charges virtually eliminated for interexchange carriers, the proponents of the ICF plan seek to improve the future business case of their latest acquisitions. With the ICF shift of cost responsibility from interexchange carriers without local facilities to carriers that maintain facilities, the ICF authors gain a potential advantage when competing with CMRS providers or any facilities-based VoIP providers.

Rural is different, especially in the area of transport. The ICF proposed Edge concept[6] will result in some cases that a large segment of a rural carrier's transport becomes uncompensated. This will result in

[5] 47 CFR Section 51. 305(a)(2)
[6] ICF Plan at page 37: A CRTC must establish an Edge within each Contiguous Portion of the CRTC's Study Area within a LATA.

disproportionate cost increases to rural customers and will ultimately impact a rural carriers' ability to serve the highest cost customers.

<u>The NARUC plan is supported by sound principles, but several aspects of its proposal require major revisions to address rural needs</u>

The NARUC process has adopted a number of sound principles[7] with regard to intercarrier compensation reform. Seeking an approach that is compatible with existing law is prudent, given the challenge of enacting new legislation. Seeking to avoid arbitrage via rates that are unified and viable in a competitive market reflects a healthy cognizance of today's communications environment. Protecting universal service is not just a sound principle, it is the law. Maintaining an appropriate balance between the federal and state roles reflects what is statutorily required today. The PrincipleVII.B. that appropriately recognizes "that areas served by some rural local exchange carriers are significantly more difficult to serve and have much higher costs than other areas" is in stark contrast to the ICF proposal that implicitly assumes the world is comprised of equally sized players that serve densely populated metropolitan areas.

The challenge of developing any set of principles into a workable plan that is universally applicable is in meeting the needs of all existing (and possibly emerging) constituencies. There are two specific areas of the NARUC plan that fall short of meeting this metric. First, the local rate benchmark

[7] NARUC Study Committee on Intercarrier Compensation Goals for a New Intercarrier Compensation System (NARUC Principles), released May 5, 2004.

requires some definitional consistency with regards to rural carrier Extended Area Service (EAS). Second, the aspect of the proposal to utilize block grant funding for universal service distribution is a solution in search of a problem.

We agree, in principle, with the NARUC proposal to establish a local rate benchmark. If properly defined and initialized, a local rate benchmark, coupled with stricter ETC designation, may assist in controlling the level of USF support. In addition, the use of a benchmark will give recognition to the rate rebalancing that has already occurred in some states, where local rates were increased with concomitant reductions applied to intrastate access rates. It would not be equitable to ignore these previously enacted rate rebalancing activities.

A similar need in order to reflect an equitable approach is the requirement to include rural EAS in any benchmark calculation. The urban rates of the larger carriers reflect an EAS component in most cases. While calling scope issues still remain a part of the debate, at a minimum there is a need to include as a part of a qualifying charge in the benchmark calculation any rural carrier EAS charges.

In order to establish comparable rates across the nation in a reasonably efficient manner, local rate changes to benchmark levels should be implemented in an administratively efficient manner without full-blown state rate proceedings.

NARUC has proposed that federal universal service funds be provided to individual states via a "block grant" basis for distribution to carriers based on decisions rendered by the state commission. The block grant proposal offered by the NARUC is deficient in several respects. First and foremost, Section 254 mandates that universal service support be "specific, predictable, and sufficient." Implementing a block grant approach to distributing federal universal service funding allows state commissions with such a large degree of discretion so as to render the achievement of the "predictable" tenet impossible. Similarly, the metric of "sufficiency" may well not be achieved. In order for RLECs to continue to deploy rural infrastructure in the highest-cost areas, reliable access to support funding must continue throughout the investment cycle. The arbitrary nature of even a well-intended block grant program could severely retard investment in rural areas as lenders will not provide capital, and carriers will be unwilling to assume the degree of uncertainty that would result from block grant funding decisions.

There are examples of block grant administration that could be problematic if replicated in distributing monies that would otherwise be used for rural infrastructure deployment. For example, in Alaska there are programs related to mothers and children that spend nearly 25% of its funds on administration before any monies reach the intended recipients.

The block grant issue is further complicated with the challenges that would be placed on state regulators in states where the PUC has no or limited authority over certain carriers. In these cases, a conflict would arise between the properly enacted state statutes and the state commission's desire to review certain operating company data that prior to the implementation of a block grant program would not have been subject to state commission review.

LEGAL ISSUES

The Commission has chosen to focus its questions in this area of the FNPRM on issues surrounding federal authority and preemptive capacity. However, prerequisite to this aspect of the debate we find a more fundamental legal issue surrounding any effort to bring reform to intercarrier compensation regimes. This issue is whether the proposed reform plans constitute a confiscation of rural carrier investment, as found at paragraph 99 of the FNPRM.

Some parties to this proceeding will undoubtedly cite the portion of the Verizon TELRIC case where the Court stated that Congress intended to transition from familiar public utility models "in favor of novel ratesetting" and choose to ignore the completion of the Court's statement that contained the important phrase "short of confiscating the incumbent's property."[8] The Court left open a potential takings challenge against any particular set of rates that did not provide the carrier with a compensable return.[9]

[8] Verizon v. FCC, 535 U.S. 467, 489 (2002).
[9] Id. at 524-525.

The unrecovered embedded costs of investment in the rural carriers' network facilities are real costs that will continue to be borne by the rural carriers. If carriers are not permitted to recover these costs, such actions would ultimately be deemed confiscatory and subject to review under the Takings Clause. Commission rules as found at 47 C.F.R. Section 65.1-65.830 require that a rural rate-of-return carrier be permitted the opportunity to earn an authorized rate of return on investment allocated to interstate access services.

Established precedent in this regard may be found in Duquesne Light Co. v. Barasch, 488 U.S. 299, 308-10 (1989); and FPC v. Hope Natural Gas Co., 320 U.S. 591,602 (1944). Any changes to access rates that result in revenues that do not recover total costs associated with past investment decisions reviewed by regulators do not comport to the intent of the Telecommunications Act of 1996.

Any ultimate Commission decision that would prevent a rural carrier from a compensatory return would violate the carrier's due process under the law and undermine its legitimate, investment-backed expectations. Such interference with carrier property rights in a manner that undermines such expectations constitutes a taking[10].

[10] Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978).

It would appear that a federal-state partnership[11] is required, due to the provisions of Section 254(g) that requires geographic retail rate averaging[12], but does not mandate geographic wholesale rate averaging. Solely on this basis, it does not appear that the Commission possesses a statutory basis to preempt the states on intrastate access charges. There is nothing in the record to support that rural LECs must establish access charges that mirror the rates of carriers that have scale economies. In fact, the reason for this section 254(g) is the existence of rate disparities.

If the Commission decides to take a walk down the pothole-filled road to preemption, it is likely to stub its regulatory toe on the Louisiana[13] decision. In *Louisiana*, the Court rejected the FCC's efforts to preempt states on depreciation rates of common carriers. Several key passages from this decision relevant to the instant debate are as follows:

> Thus, we simply cannot accept an argument that the FCC may nevertheless take action which it thinks will best effectuate a federal policy. An agency may not confer power upon itself. To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. This we are both unwilling and unable to do. (pp. 374-375).

NETWORK INTERCONNECTION ISSUES

[11] Any attempt to preempt authority should include concomitant responsibility (burden) for cost recovery. In areas such as the jurisdiction of Internet-related traffic, it is debatable whether the federal jurisdiction has shouldered its burden.

[12] We would anticipate that since the two largest interexchange carriers are in the process of being acquired by RBOCs, the Commission's merger review agenda would include Section 254(g) issues.

[13] Louisiana Public Service Commission et al. v. Federal Communications Commission, 476 US 355 (1986).

Unlike the relatively recent issues of access charges and universal service, the network interconnection issues have a history that predates Mr. Bell's grand invention of 1876. For example, the issues regarding telegraph interconnection posed regulatory challenges early in the 1900's. The difference between issues then and now is driven by the panoply of services that are available over modern transmission facilities and the sheer magnitude of the dollars involved in these types of regulatory decisions.

In this section of the FNPRM, the Commission poses a series of questions concerning what changes are needed with respect to various industry network interconnection arrangements. In analyzing and redefining interconnection obligations, the Commission should structure a plan that differentiates between large and small carriers.

<u>The different circumstances of rural carriers should be accounted for in any reform plan</u>

The default point of interconnection (POI) should not be established at the tandem location as proposed under the ICF "edge" concept. This would create the possibility of undue costs on rural customers.

Under any reform scenario, rural carriers should be permitted to interconnect at existing meet points unless otherwise agreed to by the rural carrier, with the interconnection point within the rural carrier's network area. This is necessary in order to comport with the rules at 47 C.F. R. Section 51.305(a)(2):

> *An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network at any technically feasible point within the incumbent LEC's network.*

<u>The tandem provider has an obligation to provide usable records</u>

Rural carriers must be compensated for all calls that terminate on their networks. A process should be developed to identify "phantom traffic" in order to ensure that carriers are paying appropriate charges under current rules and regulations. We submit that any attempts by carriers to strip off or alter billing information is by definition illegal and should be addressed by the Commission initiating action via ordering all carriers to comply with existing network billing obligations established by the recognized industry billing forums. We respectfully suggest that the Commission currently possesses the authority to levy penalties on carriers that continue to engage in any unlawful and illegal billing practices.

<u>The Commission must avoid confiscation</u>

As we discussed in the prior section on Legal Issues, the burden of proof is on the Commission to avoid confiscation issues. As the intercarrier compensation regime is reformed, the Commission must ensure that rural carriers are compensated for the use of their facilities. In simplest terms, when the network functionality of a carrier is accessed by the retail service provider (RSP) to provide retail service to its customers, the RSP is obligated to pay appropriate compensation (e.g., origination, transport, termination) to the network carrier regardless of the technology or protocol decision made by the RSP to handle the call.

For example, with interexchange calls, this service is provided on an end-to-end basis, and originating and terminating access should apply to the RSP (interexchange carrier). For reciprocal compensation, according to Section 251(b)(5), this should only apply when the call is local to BOTH carriers that have customers participating in the call. For traffic handled within a local area, the RSP is the carrier that is serving the customer who originates the call.

The ICF plan is not a change in the technological paradigm, but rather a not so clever attempt to receive services without paying a fair price. It is still the LEC that would be providing the access to customers of another company (in some cases a combined RBOC/IXC megacompany) just the same as under the current rules, but under the proposed rules would not receive direct compensation for that functionality. Our research indicates that in no other business would retailers be allowed to service customers while using the property of another company without compensating the company providing the resources.

This is even more important when one assesses the potential impact of the proposed SBC/AT&T and Verizon/MCI combinations. While a merger in many cases need not be disqualified solely due to size or the fact that it is achieving vertical integration, it is poor public policy to allow these combined carriers to have virtually free use of all originating and terminating access for their newly acquired business segments that contain a national footprint. There is no justification to confiscate the assets of rural carriers when the cause for the acquisitions of these soon-to-be former Fortune 100 companies is poor management decisions in the case of AT&T or well-documented corporate misconduct in the case of MCI.

Transit Service Issues

At paragraph 128 of the FNPRM, the Commission raises the transiting issue. We believe that the Section 251(a) obligation to interconnect directly or indirectly encompasses an obligation to provide transit services.

All small carriers need tandems for interconnection. In many areas, there are no alternative choices for tandem providers, resulting in a potential abuse of market power by the tandem provider. As industry consolidation continues, the regulation of tandem services will become more important.

We recommend that the Commission develop rules and regulations related to the provision of transit services under reasonable rates, terms, and conditions. This request emanates from the fact that the ICF proposal for transiting is at best transitory in nature. We are concerned with the information found in reviewing the ICF Brief, Appendix A, footnote 29 that states that the ICF reserves the right to argue that those carriers are not required to offer tandem transit service. Without the Commission establishing a reasonable set of parameters, rural carriers will be required to pay whatever price an ICF member chooses to extort, or perhaps not even be able to obtain the service.

COST RECOVERY ISSUES

The Commission has posed an extensive series of questions with respect to cost recovery. This comprehensive list includes a discussion of possible TELRIC pricing applications. We submit that the observation of three informed industry observers relative to TELRIC is applicable to the rural carrier scenario: "a pricing model designed to mimic the forward-looking costs of an ideally efficient provider without any of the risk of actually investing in facilities."[14]

Alfred Kahn's comments from nearly a decade ago are very appropriate in this current debate on TELRIC pricing. In a letter to then FCC Chairman Reed Hundt dated January 14, 1997, Dr. Kahn asserted that the relevant costs are the costs that will actually be incurred by a carrier that has a fully functional network:

> *The general economic principle that they cite clearly requires, however, that the correct pricing signals inform consumers of the costs that society will actually incur if they take somewhat more of each good or service. Advocates of the blank slate version of the TELRIC typically assume that this is the level to which competition would drive price, if it were effective. They are mistaken. In a world of continuous technological progress, it would be irrational for firms constantly to update their facilities in order completely to incorporate today's lowest-cost technology, as though starting from scratch. Investments made today, totally embodying today's most modern technology, would*

[14] P. Huber, M. Kellogg, and J. Thorne, *Federal Telecommunications Law* (Aspen 2d ed. Suppl. 2004), page 5.

instantaneously be outdated tomorrow and, in consequence, never earn a return sufficient to justify the investment in the first place.

The provision of telecommunications in the highest cost areas of the country is inherently risky and capital intensive. In evaluating intercarrier compensation cost recovery issues, the Commission should not attempt to ignore its consistent record evidence of the last decade that rural costs are different. In evaluating non-embedded cost alternatives for rural carriers, the Commission should heed its experience from the Rural Task Force evaluation of a hypothetical model. In short, rural rate-of-return carriers have specific cost recovery needs. We address each of these issues in turn:

Rural is different

This was the conclusion reached by the Rural Task Force at the start of the decade. Rural is still different in 2005, and will still be different in 2010[15]. The rural difference is a valid consideration in developing intercarrier compensation public policy in 2005. Any reform to intercarrier compensation for rural carriers must reflect the diversity of cost between rural and non-rural carriers, and among the subset of rural carriers[16].

[15] In the RTF Report, the concept of the Law of Large Numbers was discussed, explaining the phenomena that with a large number of offices, urban carriers are able to flatten out any discrepancies. In an access/ratemaking arena, the corollary of the 3D rule (Drastically Different Denominators) is applicable. With fewer customers in the ratesetting equation, the mathematics are different for rural carrier ratesetting.

[16] It is worth noting that in the Commission's own NRPM in WC Docket No. 03-173 issued in September, 2003 focused on TELRIC methodology, the Commission itself tentatively concluded that TELRIC rules "should more closely account for the real-world attributes of the routing and topography of an incumbent's network", as well as "should not be based on the totally hypothetical cost of a most-efficient provider."

This was demonstrated empirically in the Rural Task Force's White Paper 2[17], and this research was corroborated in NECA's *Trends in Telecommunications Cost Recovery: The Impact on Rural America* report released in October, 2002.

<u>The Commission has previous experience with reviewing non-embedded cost basis approaches for rural carriers</u>

The Commission has a great deal of record evidence concerning rural cost differences that was accumulated during the Rural Task Force process. Based on its substantial evaluation of the Synthesis Model using these criteria, the RTF concluded:

> The aggregate results of this study suggest that, when viewed on an individual rural wire center or individual Rural Carrier basis, the costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs. In fact, much of the data analysis suggests that the model results tend to be in the high and low extremes, rather than near the expected results for the area being analyzed. While it may be technically possible to construct a model with added precision and variables to account for the differences among Rural Carriers and between non-Rural Carriers and Rural Carriers, it is the opinion of the Task Force that the current model is

[17] "The Rural Difference", Rural Task Force White Paper 2, released January 2000.

> not an appropriate tool for determining the forward-looking cost of Rural Carriers.[18]

With its adoption of the majority of the RTF recommendations, the Commission itself has recognized that the costs of rural carriers are higher than non-rural carriers.

In evaluating the conclusion of the RTF in regards to the Synthesis Model, one should ask, "What has changed in the mean time that might alter this conclusion?" If one reviews the current version of the Synthesis Model in relation to the version that the RTF evaluated, one can quickly conclude that in regard to the model itself, very little has changed in the ensuing years.[19] While there have been minor modifications in the Synthesis Model since that time, there has been no substantive review or modification to the model to address the wide variety of concerns documented by the RTF in its Report. No effort has been made to modify inputs or to add to the flexibility of the Synthesis Model to address the substantial concerns identified by the RTF. One can therefore reasonably assume that should such an analysis be conducted today, similar concerns regarding the validity of the Synthesis Model as a tool for estimating forward-looking costs would be equally apparent.

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[18] A Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies, Rural Task Force White Paper 4, September 2000, page 10.
[19] As shown in "History" document contained on the FCC website at http://www.fcc.gov/wcb/universal_service /

With respect to considering other non-embedded cost based approaches (e.g. TELRIC), it is instructive to examine that external factors have continued to change over time, raising further questions regarding the validity of a non-embedded cost based approach as an adequate tool for rural carrier cost calculation.

<u>The Commission has precedent for a different treatment for rural carriers</u>

In 2005, rural is still different. What does this mean for a review of the basis of calculating rural carrier intercarrier compensation? The Commission should follow for rural carrier intercarrier compensation the policy differentiation it used in adopting the Rural Task Force rules for universal service. Simply stated, the prescription to keep communications in rural areas viable is to continue the principles that serve as the foundation of the earlier Rural Task Force rules.

First, the Commission should continue to calculate rural carrier intercarrier compensation based on rural carrier study area embedded costs (with a pooling option), unified at a common rate level. Pricing must include an appropriate allocation of joint and common costs in order to comply with the statutory requirements of Section 254(k), and avoid sending distorted economic signals by thwarting a carrier's desire to invest in infrastructure. Consideration should be given to rate banding based on the cost characteristics of the area served[20]. This approach has provided appropriate incentives for prudent investment in rural infrastructure.

At paragraph 112, the Commission requests comment on whether target access rates should be established for rate-of-return LECs. While the Commission should continue to use targets for rate of return, the use of an arbitrary target level is not appropriate for rural carrier intercarrier compensation rates. The current 11.25 percent authorized interstate rate-of-return for calculating rural ILEC return levels remains appropriate. Using arbitrary and capricious rate level targets violates established precedent and procedure[21] and common sense for high-cost rural service territories. The record also does not support that the target rate adopted in the CALLS Order is the appropriate level for rural carriers. For the reasons discussed in the section that describes rural differences, such an approach is wholly inappropriate for the subset of rural carriers. If the Commission seeks a default transitional target rate, we believe a rate of $0.02 per minute is more appropriate.

[20] As stated by Senator Conrad Burns from Montana: "There is a lot of land between light poles."

[21] In the Commission's 2001 MAG Order, the Commission rejected the use of a proposed target rate of 1.6 cents per minute based on a lack of adequate cost data. It seems ironic that the Commission would consider ignoring a similar cost support standard for rural carriers when it recognized in *MAG* that many rate-of-return carriers have rates higher than 1.6 cents per minute. Those costs have not declined for many carriers since that time.

Third, the Commission should reject once and for all the proposal to calculate rural carrier intercarrier compensation on a bill and keep basis[22]. The existing system of cost recovery consisting of three equally important components of access charges, universal service support, and local rates is the only approach available to the Commission that will enable it to avoid valid claims of confiscation. Further, it is necessary to have Joint Board action that could permit rural carriers to recover any shortfall from access rate unification in order for rural carriers to meet their universal service obligations.

Fourth, any transition of intrastate access rates should be over a period of not less than 3 years. For rural carriers, access is a true cost, not a chip to negotiate away in order to obtain a preferred regulatory treatment.

Fifth, we believe that the Commission is required to refer jurisdictional issues to a Joint Board. Under current law and regulation, the states have the responsibility to establish rates in order for carriers to have an opportunity to recover state-assigned costs. We respectfully submit that the mandatory referral provisions of section 410 (c) are applicable, in this case to the Federal-State Joint Board on Separations.

[22] Supporters of bill and keep approaches are confusing the "may" aspect in Section 252(d)(2)(B) with the "shall" aspect of the 2001 MAG Order that requires that rural carrier rates for interstate access will permit recovery of costs. This is analogous to the confusion of the "may" and "shall" provisions of designating eligible telecommunications carriers in rural versus non-rural areas that has plagued the universal service arena for the last several years.

Specific rate level issues

The proposals to unify interstate and intrastate access rate levels will move dollars to either recovery from end users in the form of additional SLCs or from some form of support mechanism. Additional SLCs should be minimized with an appropriate balance between reduced access and increased universal service support. The Commission has previously recognized in the MAG Order that recovery of network-related costs should be comprised of a combination of local service revenues, access revenues, and universal service support. The ICF proposal to increase the SLC caps up to $10 per line per month will not result in rural end-user charges being comparable with urban rate levels.

Under the present Commission rules, the majority of rate-of-return carriers charge their subscribers SLCs at a capped level while many of the price cap carriers are below the capped level. Increases to SLCs must be managed so as to not exacerbate this differential and thus violate the comparability criteria (Section 254 (b)(3))[23] that currently is in place in the rules.

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[23] Consumers in all regions of the Nation . . .including rural areas . . . should have access to telecommunications . . . at rates that are reasonably comparable to rates charged for similar services in urban areas.

However, we do not advocate eliminating SLCs[24], as is posed in the question at paragraph 101 in the FNPRM. If the Commission were to eliminate the ability of a rural carrier to charge a SLC, the end result would be to place additional pressure on the federal universal service support mechanisms.

Specific rate element issues

Switching

The cost recovery of switching investment for rural carriers is different than for large urban carriers. For rural carriers, the traffic-sensitive portion of the cost is driven by the number of customers on the network, by changes in customers' use of the network, and other factors. Some parties have asserted that LEC switching is not traffic sensitive due to vendor contract pricing being stated on a per-line basis. This is merely a vendor pricing tool, with some level of assumed usage related to each line ordered. In the 2004 TELRIC proceeding (WC Docket No. 03-173), Bell South placed reply comments in the record (page 71) that stated that the only non-traffic sensitive component of a switch is a line termination port. Bell South offered that at least two-thirds of the investment of a typical switch is usage-sensitive.

[24] At the other extreme, it appears that the CBICC proposal (page 2) to limit SLC increases to $0.50 per year may place a disproportionate burden on rural carrier local rate levels.

The costs inherent in packet switching are traffic sensitive as well.

Transport

For rural carriers, switched transport costs are distance-sensitive and traffic- sensitive in nature. The traffic-sensitive nature of this rate element emanates from the fact that the number of trunks increases as the volume of peak load traffic increases. The majority of costs involved in transport are incurred on a per-mile basis; hence, the distance sensitivity.

In Table 1 below, we provide some illustrative data on rural carrier transport distances.

Company Name	State	Location	Mileage
Nemont Tel Coop	Montana	Westby	302
Nemont Tel Coop	Montana	Outlook	280
Nemont Tel Coop	Montana	Plentywood	278
Range Tel Coop	Montana	South Miles City	156
Range Tel Coop	Montana	Alzada	156
Range Tel Coop	Montana	Busby	100
Range Tel Coop	Montana	Lame Deer	100
RT Comm., Inc.	Wyoming	Gas Hills	184
RT Comm., Inc.	Wyoming	Jeffrey City	181
RT Comm., Inc.	Wyoming	Osage	127
Sandwich Isles	Hawaii	Laiopua	193
Sandwich Isles	Hawaii	Kalamaua	53
Sandwich Isles	Hawaii	Hilo	238

As shown in Table 1, some rural carriers have exceptionally long transport routes. What are the implications of the longer transport routes?

We believe it may be necessary to implement a tiered approach for transport based on the size of the wire center.

With respect to plans proposed, the transport rate proposed in the ICF plan ($0.0095 per minute) is wholly inadequate[25] to compensate a rural carrier with a significant distance sensitive transport requirement. As is evident throughout the ICF plan, the bias toward an urban environment is glaring. The ICF company's have a low level of intracompany transport, as opposed to most rural carriers that must shoulder a significant "intracompany" burden in the ICF Edge world. While it is not surprising to see such a bias, it is not prudent public policy for rural areas.

Intrastate access charge recovery issues vary by state

If the level of access charge rates is unified, some carriers will experience a reduction, in some cases significant[26], of revenue previously provided from intrastate access. With recovery then "assigned" to either local rate payers or some type of state support mechanism, we note that earlier in this filing we have demonstrated that not all the revenue differential may reasonably be recovered from end user customers. This issue becomes acute in the states that do not presently have the authority to implement an intrastate universal service recovery mechanism.

[25] The ICF proposal creates a form of regulatory "redlining" that is detrimental to rural carriers.
[26] For example, two carriers in Montana have intrastate access rates around $0.20 per minute, while at least one carrier in New Mexico has a state access rate of $0.33.

Notwithstanding the reference to 'state mechanisms' in Section 254(b)(5), there is currently no requirement for a state to have implemented a state fund. For states that have not established a state fund, an adequate transition period or an interim special federal fund will be required. It is worth noting that the Commission has had mixed results[27] in its recent attempts to shift responsibility to the states.

IMPLEMENTATION ISSUES

There are a number of key implementation issues with respect to intercarrier compensation reform. A transition is needed, as the impact on rural carriers begins at a different starting point than the impacts on non-rural carriers.

The option of pooling should be maintained for rural carriers

The ability to participate in interstate, and in some cases intrastate pooling arrangements, provides rural carriers with administrative efficiencies and risk management benefits that are not achievable by an individual carrier.

There are four notable benefits of pooling for rural carriers. Pooling reduces risk factors by stabilizing cash flows and helps to offset the effect of

[27] In the unbundling arena, the *USTA II* Court vacated the Commission's delegation to state authorities of certain unbundling responsibilities as the Court determined that certain determinations were to reside with the federal regulator. See for example *USTA II,* 359 F. 3d at 565-574. We respectfully request the Commission carefully consider the needs of rural carriers in states that do not currently have a state USF fund as a revenue recovery option.

unexpected demand reductions or unanticipated cost increases. Second, the ability to average access rates in rural areas serves to mitigate high access rates that could deter IXCs from serving isolated, high-cost areas. Third, pooling assists rural carriers with access to reasonably priced capital that is necessary to build and maintain rural infrastructure via adequate recovery of cost. Fourth, pooling reduces the administrative burdens for both the Commission and the rural carriers[28], as the filing of over 1,000 individual tariffs would create administrative complexity. The tangible public policy benefits of uniform rates, terms and conditions remain as valid today as they have been for the last two decades.

IP and New Provider Issues – The Commission has established the parameters and now must complete its work

Any new intercarrier compensation regime should not only recognize existing paradigms, but should also anticipate changes over at least the near term, if not the long term. Thus, the Commission must focus in part on the transition from a circuit-switched platform to a packet-switched world. The issues that require attention range from public safety issues to issues related to compensation and confiscation.

We are pleased to see the Commission's recent attention to the 911 issues related to VoIP service offerings. Unlike the prior debates in the

[28] CC Docket No. 78-72, FCC 82-579, Final Rules at paragraph 362: "We recognize that we cannot and should not expect a telephone company with eight employees to do everything that Pacific Telephone is expected to do." While Pacific is now a part of SBC, soon to be SBC/AT&T, the observation remains relevant today.

universal service realm concerning the provision of equal access by CETCs, which is a debate predicated on competitive neutrality concepts, the availability of 911 service in situations where the alternative service is advertised as the "new telephone company" hits straight at the heart of this nation's public safety policies. In prior decisions, the Commission has stated that 911 service is a key element[29] of public safety policy. With the documented examples of problems in this area, we encourage the Commission to adhere to its previously stated support of prudent public safety approaches and resist any suggestions that are motivated by a pique of competitive zeal.

With respect to regulatory classifications and determinations, the Commission has established the bookends that were needed and now is faced with the task of completing the chapters in the middle. To date, Commission decisions have declared pulver.com, a computer-to-computer VoIP service to be an information service; decided that Vonage Holdings Corporation IP-to-PSTN service is interstate in nature, and not subject to the majority of state regulatory authority; and properly ruled that AT&T's bold attempt to have its IP-in-the-middle transport declared other than telecom was not appropriate public policy.

In the pulver.com situation, the Commission determination of information service as opposed to telecommunications service hinged in part

[29] Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking (2003) , 18 FCC Rec. 25340, paragraph 1, stating in part that: "911 service is critical to our Nation's ability to respond to a host of crises."

on a lack of transmission functionality. In order to participate in pulver's Free World Dialup (FWD) that seeks to simplify the process[30] of setting up voice-over-broadband calling, members need their own broadband internet access and download software that runs on a soft phone or SIP phone and are assigned a five or six digit FWD number (no NANP). The Commission ruled[31] that Pulver "acts as a type of directory service, informing its members when fellow members are online." Unless and until Pulver accesses the public switched network, this ruling is consistent with the need to compensate carriers for use of their facilities.

In the AT&T petition, the Commission saw past the subterfuge and properly ruled[32] that merely converting the traffic from time division multiplexing to Internet protocol in transit does not qualify the interexchange carrier to an access charge exemption. The Commission explained that protocol conversions internal to a carrier's network and transparent to the end user do not change the classification of the service. The Commission also rejected the argument that VoIP traffic should be exempt from access charges on the basis of the level of the charge (AT&T Order, paragraph 18). As long as voice-over-broadband providers terminate their calls over the public switched network, they are using the network in

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[30] Pulver functions like a high-tech instant messaging service, with a name and presence database that tracks members current, real-time IP addresses whenever they are online.
[31] Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, Memorandum Opinion and Order, 19 FCC Rec. 3307, paragraph 9.
[32] Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Order, 19 FCC Rec. 7457, paragraph 45. (2004) (AT&T Order)

the same manner as an interexchange carrier (or division of an vertically-integrated RBOC) and create the same types of costs that must be borne by the provider of the PSTN and should continue to be recovered through intercarrier compensation.

As the Commission addresses future issues, we submit that the Commission must uphold the basic tenet that carriers are entitled to compensation for the use of their facilities.

Regardless of how the Commission ultimately chooses to categorize Vonage-like services, the current law provides the Commission the authority to extend universal service obligations to voice-over-broadband providers, pursuant to Section 254(d). Section 254(d) allows the Commission to require contribution from “other providers” if the public interest so requires. At this juncture in the techcom revolution, the public interest requires these contributions be assessed.

<u>Despite some assertions to the contrary, Current IP Models are not focused to Bill and Keep</u>

Current compensation arrangements in the IP world are not generally based on bill and keep for entities of unequal size. Currently, there are three basic models for the exchange of traffic between ISPs.

The first model, commonly referred to as the transit model, occurs where there are accepted value differences between ISPs. In this model, the transit provider agrees to accept and deliver all traffic to any Internet address from a transit customer. The transit customer pays the transit provider for transiting service and for the interconnecting link between networks.

The second approach, known as the peering model, is when two ISPs accept that there is comparable value to the exchange of traffic to each other's address space and there are no compensation flows.

The third option is known as the peering with settlement model. This occurs when two ISPs deliver traffic to each other's address space and agree to pay each other for the delivery of such traffic.

Any argument that intercarrier compensation must convert to bill and keep for the evolution to the IP world is a disingenuous argument.

More analysis is needed

As the industry inexorably moves to a capacity-based environment, a proceeding should be established by the Commission to evaluate compensation for IP interconnection (e.g., ports, links, sessions).

In summary, any reform should promote infrastructure investment in rural networks, as this is crucial in order to realize rural broadband and IP type services.

ADDITIONAL ISSUES

CMRS Issues

The proposal by Western Wireless[33] should be rejected out of hand as it is in essence setting parameters for a voice-only network platform.

At paragraph 135, the Commission seeks comment on whether the Commission should eliminate the intraMTA rule. The intraMTA rule states that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations rather than access charges.

We recommend that the Commission eliminate the intraMTA rule so that LEC-originated calls would use the wireline local calling area to determine whether the calls are subject to reciprocal compensation.

With respect to rating issues raised in paragraph 143, we recommend that calls to CMRS carriers should only be rated and routed as local calls when the CMRS carrier's POI is located within the LEC's rate center. There is also appellate support for limiting rural carrier responsibility to its existing network and service arrangements.[34]

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[33] As indicated in the Western Wireless Plan at page 3: "based on the forward-looking economic costs of providing the supported universal service in an area using the least-cost technology." This directly contravenes Section 254(b) of the Act that directs the Commission in part to: *"(2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.*"

[34] In a Ninth Circuit case regarding interconnection with a CMRS provider, this court confirmed that interconnection obligations are established with respect to the LEC's existing network. U.S. West v. Wash. Utils. & Transp. Comm., 255 F. 3d 990 (9th Cir. 2001): "Sections 251 and 252 of the Act require ILECs to allow CMRS providers to interconnect with their existing networks in return for fair compensation."

We respectfully submit that the Commission has no jurisdiction by which to preempt state commission jurisdiction over the retail rating of intrastate calls and the definition of local calling areas.

Respectfully submitted

Via ECFS on 5/20/05

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