Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

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SUMMARY

RICA's initial comments in this proceeding demonstrated that there is a public interest in revised intercarrier compensation rules that provide rural CLECs an opportunity to obtain revenues adequate to support services to rural areas. Without adequate access revenues, the large incumbents will relegate these rural areas to telecommunications backwater status and the national goal of ubiquitous broadband availability will not be reached. RICA member rural CLECs competing in the higher cost areas of large ILECs are in materially different circumstances from urban CLECs and should not have

their access revenues or universal service support determined by the broad averages applicable to the ILEC. RICA agrees that reform of intercarrier compensation is needed, including unification of inter- and intrastate access, but explains why such reform does not require elimination or significant reduction of access revenues.

A substantial number of parties agree with RICA that none of the various Bill and Keep proposals should be adopted. Bill and Keep is appropriate only in those situations, such as some EAS arrangements, where traffic is roughly balanced and both carriers are operating at the retail level to provide service to the same local calling area. Switched access service provided to IXCs meets none of these criteria. LECs, ILECs and CLECs, do not originate interexchange traffic, they provide wholesale facilities for IXCs to do so, and there is thus no basis to require LECs to provide free service or to impose on LECs an obligation to compensate the terminating carrier.

Verizon's proposal to transition to a compensation system based on negotiated commercial agreements should not be adopted because the vast differences in size and market power between carriers would result in the large carriers being able to enforce contracts of adhesion on the smaller carriers, thus resurrecting the historical period when the Bell System dictated all industry relationships. Verizon's analogy to the relationships among Internet service providers as a model for the telecommunications industry fails to account for the significant differences involved.

While there is broad agreement on only one issue, unification of access rates, there is substantial disagreement regarding how to accomplish this result. One set of parties believes the Commission has the power under existing law to preempt state regulation of intrastate access and should use that power. The other side believes unification can be achieved through cooperation between state and federal regulators, including use of a Joint Board. At best, either approach would take many years to complete, with no assurance of success. The legal case for preemption is far from compelling and would undoubtedly face extended litigation and possible reversal. The voluntary approach, on the other hand, provides no guarantee of full cooperation and would take an extended time to complete. Given the rather unique amount of agreement on unification in this fractious industry, the better approach would be to obtain clear authority from Congress to unify access rates, in a manner that preserves a meaningful state role in establishing rates.

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REPLY COMMENTS OF
THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance ("RICA") submits its Reply Comments in response to the comments filed in this docket May 23, 2005. RICA is a national organization representing Rural Competitive Local Exchange Carriers.

I INTRODUCTION

A. RICA's Comments Demonstrated the Public Interest In A Continued Opportunity For Rural CLECs To Obtain Adequate Revenue From Intercarrier Compensation

Other than RICA, the various parties' comments spend little space considering the applicability of their preferred solutions to Competitive Local Exchange Carriers ("CLECs") much less rural CLECs, except occasionally to support continuing the rule limiting CLEC access rates to those of the incumbent with which the CLEC competes.[1] RICA's Comments

[1] There are a few exceptions, *See, e.g.,* Office of Advocacy, U.S. Small Business Administration, ("SBA") (notes the concerns of small competitive carriers that a Bill and Keep plan would drive some of them out of business); Comptel/Alts mentions that replacements for lost revenues should not be limited to incumbents. 8; Prairie Wave 3-5. CCG Consulting 3.

provided the only substantive discussion of the benefits to the public provided by rural CLECs that make modern, reliable and advanced services available to communities that would otherwise remain relegated to telecommunications backwater status by the large incumbents in the area.[2]

RICA's comments described the pre-1996 plight of rural communities in the ILEC service areas of large companies which, at best, followed policies of benign neglect in those areas. Typically the large carriers allocated all available capital and human resources to the urban areas where they faced competition for significant portions of their market. Long before the 1996 Amendments to the Communications Act, many of these communities had begged neighboring rural carriers to extend their superior service, but there was no regulatory mechanism that would permit it. After 1996, many rural ILECs accommodated their neighbors by overbuilding the large incumbent's facilities with state-of-the-art facilities and offering a multitude of heretofore unavailable services.[3]

In 2001, however, the Commission decreed that many of these rural CLECs must reduce their interstate access charges over time to that of the incumbent. A fundamental problem with this approach flows from the fact that the large ILEC rates are generally set on a state wide average basis while rural CLECs operate only in the lowest density, highest cost portion of the ILEC's study area. The opposite is generally true for the urban CLEC

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2 RICA , 7-9.

3 RICA, 7-9.

that seeks high density and concentrations of enterprise customers. The result of treating rural CLECs the same as urban is that rural CLECs thus recover a lower proportion of their total cost through access than would a rural ILEC serving an area with the same density and demographic characteristics.

The Commission did, however, permit some rural CLECs to set their access rates at the same level as the NECA tariff in recognition of their higher costs of service and deployment of new facilities capable of supporting, advanced calling features.[4] A few months later, however, the Commission in the *MAG Order* reduced the NECA rates significantly, but converted what had been access cost recovery to additional USF support for NECA pool members which kept them whole.[5] The rural CLECs, however, were provided no additional source of revenues to offset their rate reductions. RICA's principle concern is that the Commission will again reduce their access rates and provide no offset. Rural CLECs would thus be required to substantially increase end user charges.

B. Revised Intercarrier Compensation Rules Should Recognize the Unique Role of Rural CLECs

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[4] *Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Doc. No. 96-262, 16 FCC Rcd 9923 (2001), *recon. denied,* 19 FCC Rcd (9108, 9125)(2004). The Commission on Reconsideration rejected RICA's request that all rural CLECs be permitted to use the NECA rate.

[5] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers,* Second Report and Order, 16 FCC Rcd 19613, (2001) ("MAG Order").

The effect of the reductions begun in 2001 has been to reduce severely the ability of many rural CLECs to extend the benefits of their services to other communities, and to strain their ability to continue. Now the Commission is considering a variety of proposals to reform the problems with intercarrier compensation, all of which would further reduce or eliminate access revenues for ILEC and CLEC alike. Some parties propose to provide offsetting revenues to maintain approximate revenue neutrality for rural ILECs, but none would extend this support to rural CLECs which have essentially comparable cost structures.[6]

In the rural communities which except for the CLEC lack adequate service, much less competition,[7] the revised intercarrier compensation rules must recognize that the financial ability of rural CLECs to continue and to expand their operations requires that they operate under rules similar to rural ILECs. With no adequate alternative carrier providing service, many rural areas in territory of the large ILECs will remain telecommunications backwaters, and the national goal of ubiquitous broadband service will not be

[6] Rural Alliance, 74; NTCA, 26.

[7] While many rural municipalities have independent cable systems, they typically do not have the resources to modernize their facilities to provide two-way broadband communications. Even those that have upgraded their facilities rarely extend their services beyond municipal boundaries, while rural CLECs usually build on an exchange-by-exchange basis.

achieved.[8] RICA's Comments therefore argued that rural CLEC access rates and support levels should be based on the CLECs own cost, rather than that of the incumbent.

RICA's Comments supported several of the Rural Alliance's principles, including unification of intercarrier rates based on embedded costs and entitlement of network providers for compensation for use of their networks by others.[9] The Rural Alliance proposal however needs to be broadened to include rural CLECs within these principles.

RICA also recognized that eventually capacity based charge may be appropriate, as advocated by CCBAP, however it is not necessary to resolve those particular parameters at this time. The Commission should be moving towards less prescription of rate structure rather than more. Carriers should be free to develop tariffs that use different demand units, e.g. minutes or months.

C. The Commission's Objective of Rational Intercarrier Compensation Can Be Achieved Without Major Reductions in Carrier Revenue

Chairman Martin has recently emphasized his primary goal is the ubiquitous availability of broadband communications services.[10] The

8 While many rural areas are now in the license areas of one or more CMRS carriers, this service generally has coverage gaps and does not have the robustness or bandwidth capability to provide broadband services.

9 RICA, 12.

10 Kevin J. Martin, "United States of Broadband," Wall Street Journal, July 7, 2005,

ubiquitous delivery of services cannot occur unless some entity makes the necessary investment in facilities.[11] No rational entity invests in facilities unless it can develop a business plan which indicates a reasonable probability that the services will generate sufficient revenue to cover the expenses of providing the service plus a return on the investment.[12]

Local exchange carriers, ILECs and CLECs, have at most two or three sources of revenue: payments directly from their subscribers, payments from other carriers for services provided to those carriers' subscribers over the LEC's facilities, and for some, Universal Service Support. Some parties suggest that the solution to all intercarrier compensation problems is simply to eliminate the second source of revenue and shift at least most of that responsibility to the LEC's subscriber.[13] Other parties would retain positive compensation, but fix the rate at levels insufficient to support the service. In high-cost, low-density rural areas, at least, the result would be to quickly

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[11] This is true regardless of the technology used; there "ain't no free lunch." While different technologies have different costs to deliver a broadband capability to a subscriber, the lowest cost technology, either initial or continuing, is not necessarily the most desirable. *See,* MITS/MTS/Mid-Rivers, 18. Wireless, including satellite is subject to atmospheric, terrain, electromagnetic and vegetation interference, wireline facilities, including fiber optics, require access to real estate and are vulnerable to the errant backhoe.

[12] This ultimate reality must be kept in mind in considering the statements of some VOIP providers that unlike local exchange carriers, they offer their service with investments of less than $100 per subscriber. To the extent this is true, it is only because they are able to charge their customers for services which could not be provided without the use of other carriers' facilities, for which they claim to be exempt from any payment obligation.

[13] ICF, 25; Qwest 19, Western Wireless, 11; CTIA, 10-19.

make service unaffordable, thereby decreasing the utility of the network to everybody.

Achieving unification of intercarrier compensation rates will inevitably result in reductions in intrastate access revenues in those states where the current access rates are higher than the interstate rates. Because the need for unification is the one area of broad agreement, the primary initial focus of this proceeding should be to determine how to accomplish this result without destroying the ability of LECs to continue to provide service or remove their investment to complete the deployment of broadband capabilities.

II RETAIL SERVICE PROVIDERS MUST CONTINUE TO COMPENSATE CARRIERS WHOSE NETWORKS THEY USE TO PROVIDE SERVICE; "BILL AND KEEP" WOULD NEITHER SERVE THE PUBLIC INTEREST NOR COMPLY WITH THE ACT

A. There is Substantial Support in the Comments For Continuation of Compensation To Local Exchange Carriers for the Origination and Termination of Traffic of Other Carriers.

A wide range of parties, including those without and without plans, support continuation of compensation to LECs for carrying the traffic of other carriers. NARUC, for example supports continued intercarrier compensation at rates that "reflect underlying economic cost."[14] Likewise, NASUCA's Principle 1 emphasizes that "originating, transiting and terminating telecommunications traffic imposes costs…." on the carrier providing the

14 NARUC, 2.

service. The Rural Alliance's Third Principle states succinctly: "Retail Service Providers Should Pay for Their Network Usage."[15]

B. Standalone IXCs May Be Disappearing, but the Retail/Wholesale Distinction Lives On

In many ways, the proposal to eliminate access charges to solve the current problems with of application of access charges and reciprocal compensation to a rapidly evolving industry is well described by the observation that: "For every complex, difficult, problem there is a solution that is simple, neat---and wrong." Bill and Keep has been used for a long time in the industry for situations such as EAS where both carriers are retail providers of the same service in the same defined local calling area with known and predictable demand levels that are roughly in balance. Where there is a material level of traffic imbalance, however, Bill and Keep is not used.[16] The circumstances under which carriers provide switched access to a multitude of entities pursuant to compulsory interconnection and equal access obligations are vastly different from those in which Bill and Keep has been voluntarily adopted.

The concept of the standalone long distance carrier began with the *Execunet* decisions and the subsequent *ENFIA* agreements reached by the industry in the late 1970s to afford new entrants into the Long Distance

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15 Rural Alliance, 13.

16 Verizon provides substantial documentation that the voluntary interconnection agreements adopted among Internet service providers do not use "peering," i.e. Bill & Keep where there is not a balance of traffic. Declaration of Lyman Chapin at 19, attached to Verizon Comments.

business a non-discriminatory means of compensating local telephone companies for originating and terminating their calls. The Commission then instituted CC Docket No. 78-72 to develop formal access charge and pooling rules. The date of application of these new rules was accelerated as a result of the Court's adoption of the concept in the *MFJ* but that decree did not originate the concept.[17]

The standalone IXC has thus been a major construct of the industry for a little over 25 of the last 117 years since the expiration of the Bell patents. There are substantial indications that the industry is, in one sense, evolving back to where it was before 1978. First, led by the wireless industry, and now the VOIP providers, bundled service offerings which eliminate the geographic and minute of use distinction between local and long distance have become very popular with consumers. Second, the two largest long distance carriers are in the process of being acquired by the two largest incumbent telephone companies. As Humpty Dumpty is put back together again, the trend for wireline carriers to bundle local and long distance calling will accelerate to the point where the distinction will be largely irrelevant.

17 *MCI Telecomms. Corp.,* Decision, 60 F.C.C. 2d 25 (1976); *rev'd, MCI Telecomms. Corp. v. FCC,* 561 F.2d 365 (D.C. Cir. 1977); *MCI v. FCC,* 580 F.2d 590 (D.C. Cir.) *cert. denied,* 434 U.S. 790 (1978); *United States v. AT&T,* 552 F. Supp. 131 (D.D.C. 1982); *contra:* Bell South, 44.

Despite these trends, it is clear that for some time to come, perhaps indefinitely, local exchange carriers, ILECs and CLECs alike, will be obligated to provide origination and termination service on a wholesale basis to other entities which establish a retail relationship with customers to which the LEC has a established a communications facility, but the retail carrier has not. This type of arrangement includes both the traditional long distance service provided over the LEC's voice grade lines and IP based services provided over the LEC's broadband facilities. The wholesale, retail relationships in traditional circuit switched based service include the legal obligations to interconnect and the legal obligation to provide equal access.

Whatever may be the merits of voluntary arrangements between "peers' not to bill each other, the wholesale/retail distinction alone makes mandatory Bill and Keep an inappropriate replacement for payment for usage.[18] Bill and Keep would require LECs to provide wholesale service to retail carriers at no charge or other form of compensation. That cannot be the right answer.[19] The Comments thus illustrate a fundamental difference between access and reciprocal compensation under Section 251(b)(4). In access, the originating carrier is the retail carrier that uses the wholesale services of other carriers, pays them accordingly and bills its customer for end-to-end service. Section 251(b)(4) contemplates a situation where the

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18 Maine & Vermont, 14.

19 CCBAC, 11 ("…bill and keep…requires the entity investing and building the network to surrender it for free to third parties wishing to utilize the network"; NTCA, 19.

originating and terminating carriers are also the retail providers to the end users. [20]

The intent of that Section was essentially to extend to CLECs the pre-1996 arrangements between incumbent carriers in the same local calling areas, which involved either payments, or bill and keep, depending on the traffic balance. The Commission decision to designate entire MTAs as local calling areas for CMRS carriers has broken this system however, because the local calling areas are no longer identical. RICA agrees with those parties calling for an end to MTA wide local calling.[21]

C. The Comments Show That The Public Interest Would Not Be Served By Bill And Keep

Besides being inconsistent with a wholesale/retail relationship, the comments identify other reasons why adoption of Bill and Keep is in not in the public interest. Verizon, for example, predicts that Bill and Keep "will spawn its own arbitrage opportunities and uneconomic investment incentives, only some of which can be predicted today." [22] There will be an incentive to carriers to serve only customers with a high volume of outgoing

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20 Rural Alliance, 95-98.
21 Rural Alliance, 126-130; Qwest, 54-55.
22 Verizon, 14.

calls and pass off a substantial portion of their costs to other carriers by aggregating traffic.[23]

Verizon also makes the valid point that where access is free, the arguments before the Commission will just shift to the terms of interconnection as carriers try to find ways to obtain as much free service as possible while providing as little as possible to others. Thus the ICF's complex interconnection rules show that Bill and Keep would not result in a net decrease in regulation, even though the issues would be different. These arguments will inevitably come to consume the regulators' dockets because the underlying premise that interconnection always provides roughly equivalent benefits is "plainly erroneous."[24]

D. The Parties Have Correctly Identified the Legal Infirmities of Bill and Keep

XO correctly points out that because carriers have real costs for terminating traffic, Bill and Keep doesn't meet the Section 252(d)(2)(A)(ii)

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[23] *Id.,* NASUCA 47, David J. Gabel's statement attached to NASUCA's Comments points out that overuse of network will occur if the price set too low, and incentives for providers to enter market the market will be reduced. 6.

[24] Verizon, 23.

standard of recovery of "additional costs" of terminating calls.[25] Parties can waive this requirement, but the Commission does not have authority to require such waiver.[26] NASUCA agrees: "…it is difficult to see how the ICF's proposal to lower the reciprocal compensation rate to zero can contain any approximation of additional costs."[27] NASUCA also points out the forbearance criteria are not met, that mandatory Bill & Keep would not meet the requirement that networks be roughly balanced, and that carriers differ significantly in size and cost characteristics. [28]

III THE VAST DIFFERENCES IN SIZE AND MARKET POWER BETWEEN CARRIERS PRECLUDES RELIANCE ON NEGOTIATED COMMERCIAL AGREEMENTS TO ESTABLISH INTERCARRIER COMPENSATION

Verizon proposes that the instead of detailed rules and regulations the new intercarrier compensation regime should be determined in the future through a market based "commercial 'negotiated agreements between carriers.'" [29] Verizon argues that a market based system whereby network providers are compensated on a case-by-case basis depending on the value that the networks offer to each other has worked well for the Internet, and

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25 XO, 14-15;

26 *Id.*

27 NASUCA, 36

28 *Id.*, 39.

29 Verizon, 7.

can be readily adapted to telephony.[30] During a transition to a market based compensation system, Verizon proposes default compensation rules.[31]

RICA does not support the elimination of intercarrier compensation rules in favor of negotiated rates for the primary reason that in such negotiations the vast size differences between carriers would result in rates and terms being presented to small carriers on a "take it or leave it" basis. From the late 1890's until the establishment of NECA in 1983, the rural telephone company parents/affiliates of RICA members lived in a world in which the Bell System dictated the terms and compensation levels for intercarrier traffic with no effective recourse to regulatory intervention.[32] As the Bell System is reconstituted into a few piece parts, at least two of which will be larger than AT&T once was, small carriers, such as RICA members, are rightfully concerned that their fate will be placed at the hands of their competitors. Even the voluntary use of negotiated agreements not subject to default rules provides ample opportunity for large carriers such as Verizon or SBC to favor one competitor over another, and to drown a small carrier in litigation costs if it tries to complain. There must, therefore, be some effective and efficient means for small carriers to protect themselves from

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30 *Id.,* 8.

31 *Id.*, 15.

32 *See, Oklahoma-Arkansas Telephone Company v. Southwestern Bell Telephone Company*, 10 FCC 244 (1943) ("The wrongs committed by the respondent herein will, unless corrected, remain forever a reminder to the public of the arbitrary and hurtful actions which can be perpetrated by a powerful monopoly.") Walker, Commn'r, *dissenting* at 10 FCC at 250. *Reservation Telephone Cooperative v. FCC*, 826 F.2d 1129 (D.C. Cir. 1987).

discrimination in compensation terms and conditions if voluntary agreements are permitted.

Verizon's reliance on the Internet as a model for the telecommunications industry neglects to point out that while there are surface similarities, there are also significant differences in history, organization and function which raise substantial questions as to the transferability of the Internet model to telecommunications networks.

Verizon's discussion of "transitional default" rules, however, does contain concepts of value for the adoption of a new intercarrier compensation rules. For example, Verizon's point that interconnection does not always benefit both parties in an equitable manner is relevant to the Bill and Keep proposals. RICA also agrees that little, if any, disruption should be caused to existing interconnection rules.[33]

IV LEGISLATION CLARIFYING THE COMMISSION'S AUTHORITY TO UNIFY INTERCARRIER COMPENSATION WOULD PERMIT QUICKEST IMPLEMENTATION WITH LEAST LITIGATION RISK

A. At best, The Legal Arguments Asserting the Commission's Power to Preempt Intrastate Access Rates Will Face Substantial Court Challenges, Delaying Implementation and Prolonging Uncertainty

The one area of broad agreement in the comments is the need to unify rates so that the same charge is made for the same usage of a carrier's facilities, regardless of the jurisdiction or regulatory classification of the

33 Verizon, 29-33.

communications.[34] This agreement quickly breaks down, however, as soon as the question of whether the Commission has jurisdiction and authority to accomplish unifications is addressed.[35]

The ICF and several other parties argue that the current statutory authority of the Commission is sufficient for it to preempt state regulation of intercarrier compensation. These parties generally point to Section 251(b)(5) of the Act as establishing the Commission's jurisdiction and Section 201(b), as interpreted in *Iowa Utilities Board* to grant authority to issue rules. In this view, Congress intended Section 251(g) to provide intrastate access a temporary reprieve from FCC jurisdiction in the 1996 Act, but only until the Commission determined to develop comprehensive rules.[36] The text of that section, as well as the legislative history, however, are more favorable to the conclusion that because the obligations imposed by consent decrees on large carriers were superceded by the 1996 Act, Congress wanted to be sure that certain obligations remained in place unless and until changed by the Commission.

USTA argues in effect that if the Commission concludes that the public interest requires inter and intrastate access rates be unified, switched access thus becomes, *ipso facto,* jurisdictionally inseverable like terminal

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[34] Comptel, 7.

[35] Many of the Comments fail to make the distinction between jurisdiction and authority.

[36] ICF, 42-43.

equipment and therefore subject to preemption. [37] This argument ignores the fact in *Louisiana Pub. Serv. Comm'n v. FCC*, the Court made clear that public policy arguments for a unified national policy, however valid, do not permit the Commission to ignore Section 2(b).[38] The jurisdictional severability of the interexchange traffic which uses switched access, and thus the access itself, has long been recognized. In addition, the Commission's conclusion in its *Vonage* decision that the jurisdiction of calls sent by Voice Over Internet Protocol ("VOIP") service cannot practically be determined must be reexamined in light of the Commission's more recent determination that providers of interconnected VOIP service must provide caller location to enable E911 functionality.[39]

Similarly, USTA also claims that because the Supreme Court held in *AT&T v. Iowa Utils. Bd.* that Section 201 of the Act grants the Commission authority to preempt state law. [40] This argument fails to recognize that the Court did not find Section 201 overrode Section 2(b), but rather that several sections of the 1996 Act had modified the sweep of Section 2(b) and that the

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37 USTA, 25-26.

38 *Louisiana Pub. Serv. Comm'n v. FCC,* 476 U.S. 355 (1986).

39 *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Record 22404, *appeal pend., National Ass'n of State Util. Consumer Advocates v. FCC*, No. 05-71238 (9th Cir. Filed Feb. 22, 2005); *E911 Requirements for IP-Enabled Service Providers*, WC Doc. No. 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, June 3, 2005.

40 USTA, 25.

Commission could adopt regulations implementing those sections pursuant to its Section 201 authority.[41]

Other parties, such as NARUC and the Rural Alliance challenge this view on both legal and policy grounds, arguing that neither the plain meeting nor legislative history indicate that Congress intended such a drastic change in federal-state regulatory boundaries.[42] This argument is supported by the doctrine that implied preemption is generally disfavored and the recognition that many of 1996 Act provisions are ambiguous. It is most likely that the One Hundred and Forth Congress simply never contemplated the precise question put forth in this docket, or if it did, was not able to reach any specific resolution.

The one point of general agreement among the very diverse viewpoints represented in the comments is that it is time to move towards and unified rate structure. A decision relying on questionable authority for preemption would at best prolong resolution and uncertainty for at least two years, during which the arbitrage schemes could be expected to proliferate. At worst, if the Commission were found not to have preemption authority by the Courts, the whole proceeding would be forced to start over.[43]

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41 Maine and Vermont, pp 5-6. NASUCA correctly point out that Section 2(b) is not only a jurisdictional limitation but also a rule of statutory construction. 41.

42 NARUC, 3; Rural Alliance, 142.

43 Interstate Telcom Consulting, Inc., 16.

B. Proposals For "Coordinated" Unification At Best Will Require Extended Proceedings, With No Assurance of 100% Agreement

Other parties eschew preemption, but seek to achieve unification through an exercise in cooperative federalism in which states would implement new rules voluntarily following a Joint Board recommendation. [44] This approach has two central problems which its proponents do not satisfactorily address. First, any approach that is, in fact, voluntary cannot count on 100% participation from 51+ regulatory agencies involved.[45] Second, even if ultimately successful, the process of first having a joint board proceeding, then FCC action on that recommendation, then separate proceedings in each jurisdiction, will necessarily be a several year process.

C. Legislation Which Provides For A Meaningful State Role, But Ultimately Unifies Intercarrier Rates Could Provide A Timely Resolution And Certainty To All Parties

A better and potentially faster approach would be for the Commission and the States, supported by the parties, to present a plan to Congress which recognizes that unification of rates is the one, and perhaps only area of broad agreement. Such a plan would provide for meaningful state participation in the process, of unifying rates, while at the same time making clear the

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44 Rural Alliance, 140-159; NASUCA, 35.

45 In addition to the 50 states and the District of Columbia, there are several territories as well as those Indian tribal LECs which are not subject to state regulation.

Commission's authority to eliminate the current artificial distinctions.[46] The legislation would not address the issues about which there is substantial disagreement, but would provide time for operational experience under a unified structure. Such a narrow recommendation, if it receives broad support, could still be enacted in this Congress.

V CONCLUSION

The financial health of large segments, if not all, of the industry will be directly affected by the decisions the Commission makes in this proceeding. Rural CLECs operate in a unique niche by bringing modern, advanced communications to those rural communities relegated to telecommunications backwater status by the large incumbents. For this public benefit to continue and to expand, the Commission's revised rules should no longer fix the access rates or universal service support of the rural CLECs to those of the ILEC.

RICA agrees with most comments that state and interstate access rates need to be unified, and suggests that the most expeditious means to accomplish this will be to seek narrow legislation and thereby avoid inevitable litigation on the one side or lack of certainty of participation by all states on the other. The Commission should reject the proposals to eliminate access by setting rates at zero, and permit both ILECs and rural CLECs to set rates at reasonable levels based on their own costs.

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[46] *See,* NARUC Principle VI, Appropriate Federalism, cited in NARUC comments, n. 6.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, David Cosson, certify that on July 20, 2005 a copy of the foregoing Reply Comments of the Rural Independent Competitive Alliance were served on the following by electronic mail.

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