SDTA
Rural roots, global connections
South Dakota Telecommunications Association
PO Box 57 ■ 320 East Capitol Avenue ■ Pierre, SD 57501
605/224-7629 ■ Fax 605/224-1637 ■ sdtaonline.com

July 20, 2005

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

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

Dear Ms. Dortch:

Attached please find a copy of the Reply Comments for the South Dakota Telecommunications Association addressing to initial comments filed in CC Docket No. 01-92 in response to the Commission's Further Notice of Proposed Rule Making (FNPRM) released March 3, 2005. These comments are filed electronically in accord with the specific instructions contained in the Commission's Notice.

A certificate of service verifying electronic submission of the reply comments to the other individual referenced in the Notice is also provided.

Sincerely,

Richard. D. Coit
Executive Director and General Counsel
South Dakota Telecommunications Association

Attachments

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

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

Reply Comments
of the South Dakota Telecommunications Association

I. Introduction

The South Dakota Telecommunications Association ("SDTA"), an association of thirty (30) independent telephone companies serving mainly rural South Dakota, hereby submits reply comments in the above captioned proceeding. In its Intercarrier Compensation Further Notice of Proposed Rulemaking ("ICC FNPRM"), the Federal Communications Commission ("Commission") solicited comments from interested parties on intercarrier compensation reform proposals submitted to the Commission by industry groups, including the legal and economic bases for the proposals, the end-user effects and the universal service implications. The Commission also asked parties to comment on the proposals' effects on network interconnection and to discuss implementation issues associated with the plans.[1]

In its Comments submitted May 20, 2005, SDTA highlighted its support for the comments of the Rural Alliance and the Centralized Equal Access ("CEA") Providers. SDTA noted that in order for its member companies to provide their rural customers comparable services to those services provided to customers in urban areas and at comparable rates, any new intercarrier compensation plan must encourage investment in rural telecommunications infrastructure, protect affordable end-user rates and provide for the sustainability of universal

[1] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, ("*ICC FNPRM*") (rel. Mar. 3, 2005).

service.[2] SDTA will focus its Reply Comments on those recommendations made by other commenting parties that support its stated criteria for any new or revised intercarrier compensation plan, especially those of the National Telecommunications Cooperative Association ("NTCA"), the Rural Alliance and the South Dakota Public Utilities Commission ("SDPUC").

II. Bill and Keep is Harmful to South Dakota Rural Local Exchange Carriers and Their Customers

In a bill and keep environment, cost causation is ignored and investment in rural infrastructure is discouraged. Bill and keep also violates Section 254(k) of the Telecommunications Act of 1996. South Dakota rural telecommunications consumers and their rural local exchange carriers ("RLECs") would be harmed in such an environment.

A. Compensation Regimes Should Reflect Cost Causation

SDTA agrees with NTCA that "[T]he Commission should not use this proceeding to impose new transport obligations that deny rural telephone companies the ability or the right to receive payment from other carriers that utilize rural telephone company facilities for access, transport or termination services . . . [C]arriers utilizing others' networks are cost causers and . . should provide compensation to these providers of basic infrastructure."[3]

1. <u>Traffic Sensitivity</u>

In its comments, NTCA, points out the traffic sensitivity of circuit switches:

> . . . [T]here is an element of traffic sensitivity inherent to circuit switches. These switches are not dedicated to a single user, but must be shared by multiple users. As usage increases, so do costs.

[2] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the South Dakota Telecommunications Association, ("*SDTA Comments*") (filed May 20, 2005) at pp. 1-2.

[3] *See In the Matter of Developing a Unified Intercarrier Compensation Regime* , CC Docket No. 01-92, Comments of the National Telecommunications Cooperative Association, ("*NTCA Comments*") (filed May 23, 2005) at pp. v-vi.

> In the short term, increases in traffic beyond the capacity of the switch will require the carrier to purchase additional switch(es) and to incur the accompanying cost.[4]

Citing a technical paper on this subject, NTCA goes on to explain that not only is circuit switching traffic sensitive, but so too, is packet switching, "Routers have finite capacity, and when the volume of packets exceeds that capacity, additional routers are needed."[5]

Another part of the wireline network that is traffic sensitive is transport. Again, NTCA explains:

> Transport costs are traffic sensitive. As traffic increases, more trunks, more terminals and more T1 lines will be required. None of these elements are dedicated to a single user, but must be shared by multiple users. Increasing the capacity of any or all of these components imposes (often significant) additional costs upon carriers.[6]

SDTA believes carriers that use the network of another carrier should share the financial burden for that network because as they increase the network's traffic, they are cost causers.

2. <u>Industry Support for Positive and Rational Intercarrier Compensation Rate</u>

Like much of the industry, SDTA supports the application of a positive and rational intercarrier compensation rate to network users (cost causers) by network providers. Referencing the intercarrier compensation plans filed by the Expanded Portland Group ("EPG"), the Alliance for Rational Intercarrier Compensation ("ARIC"), the Cost-Based Intercarrier Compensation Coalition ("CBICC"), the National Association of State Utility Consumer Advocates ("NASUCA"), and the National Association of Regulatory Utility Commissioners ("NARUC"), the Rural Alliance (formed by EPG and ARIC) says:

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[4] *Id.* at p. 36.

[5] *Id.* at p. 38.

[6] *Id.* at p. 39.

> None of these plans recommend bill and keep, except in instances when carriers voluntarily agree to such an arrangement and locally exchanged traffic is in balance. . . The sponsors of these plans – representing a cross-section of entities with varying interests including State regulators, consumer advocacy agencies, CETCs, and mid-size and small LECs – agree that intercarrier compensation rates should be maintained as a vital cost recovery element.[7]

3. <u>Originating Access for Retail Service Providers not Physically Connected to the Local Network</u>

SDTA supports the Rural Alliance's principle that Retail Service Providers ("RSPs") should pay for their use of other carriers' networks. In addition, the Rural Alliance argues that any new intercarrier compensation rules must retain access charges and distinguish between access and reciprocal compensation.

> When a carrier's network facilities are used by a Retail Service Provider ("RSP") to provide a service to its customers, the RSP must provide appropriate compensation to the network carrier for that use. This compensation obligation exists regardless of the technology or protocol used to carry the call.
>
> The distinction between access charges and reciprocal compensation must be retained, even though rates are unified. Originating and terminating exchange access applies when an RSP does not have a physical connection to its customers and seeks to provide an end-to-end interexchange service. Terminating reciprocal compensation, under section 251(b)(5), applies when the call is local to both carriers and the originating carrier, the RSP in this case, seeks to provide its customers with connectivity to a customer on the other carrier's network in the local area.
>
> No business or public policy principle could justify why a LEC would, free of charge, incur costs to deliver traffic to IXCs [RSPs]. The IXC benefits by offering the service to the public; the IXC bills and collects charges from the end user; and the IXC receives the revenue generated from the call.[8]

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[7] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Rural Alliance, ("*RA Comments*") (filed May 23, 2005) at p. 141.

[8] *Id.* at pp. 13, 97.

4. Exception for Balanced Traffic

While SDTA emphatically opposes mandatory bill and keep, it does not object to such arrangements that are entered into voluntarily. As stated by the Rural Alliance:

> There are some reciprocal compensation situations in which bill and keep is appropriate and generally will voluntarily be negotiated by carriers in those contexts. For example, when traffic is in balance and each carrier's costs are similar, a voluntary bill-and-keep arrangement could be negotiated.[9]

In its comments, the South Dakota Public Utilities Commission ("SDPUC") also addresses the issue of voluntary bill and keep:

> [T]he SDPUC strongly believes that mandatory bill and keep is not the answer, especially in a rural state such as South Dakota. The SDPUC agrees with the Expanded Portland Group ("EPG") that bill and keep can work when traffic is relatively balanced and network costs are relatively equal but does not work when dealing with rural networks which are more costly and present unbalanced traffic patterns.[10]

B. Bill and Keep Would Be a Disincentive for Rural Investment

As discussed above, any new intercarrier compensation plan must acknowledge that carriers using other carriers' networks are cost causers and should pay for that use. Failure to formulate and implement policy that compensates network providers for the use of their networks will provide a disincentive for investment in those networks. NTCA posits:

> The complete elimination of carrier to carrier compensation mechanisms will diminish and possibly destroy the incentive for rural telephone companies to continue to invest both in broadband and in the basic infrastructure needed to provide the telecommunications and advanced services that rural Americans

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[9] *Id.* at p. 33.

[10] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the South Dakota Public Utilities Commission, ("*SDPUC Comments*") (filed May 23, 2005) at p. 5.

> and ultimately the Nation relies on for commerce, safety and security.[11]

On the subject of incenting the funding of infrastructure, the Rural Alliance says:

> The new opportunities created by emerging services will not happen without a modern, broadband-capable network. The Rural Alliance envisions that an underlying network, albeit packet switched, will be utilized to deliver services that cannot even be conceived of today. Sustaining revenue streams to rural carriers is necessary to support the existing and future infrastructure.
>
> When the principle of network usage is ignored, RSPs unfairly burden network providers. Under a bill-and-keep methodology, which embraces this deficiency, there is no incentive to own, maintain or improve local networks. Instead, carriers are perversely encouraged to shift costs to their local facilities-based competitors. IXCs without local facilities will gain an unfair advantage over other facilities-based competitors because IXCs will no longer be required to pay for network use. Any approach that fails to require payment for network usage will result in network owners being unfairly disadvantaged, and will discourage investment in such networks.[12]

1. <u>South Dakota – High Cost Areas</u>

South Dakota RLECs know all too well the challenges inherent in supporting rural telecommunications infrastructure. As the SDPUC explains in its comments in this proceeding:

> Given South Dakota's sparse population and wide open spaces, our telephone companies face many challenges in serving our state. These challenges are often difficult for those who live in more densely populated areas to comprehend. In order to put these challenges into perspective, the SDPUC notes that many of our rural telephone companies have very few subscribers per mile. For example, Golden West Telecommunications Cooperative has only 1.04 subscribers per route mile of facility.[13]

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[11] *See NTCA Comments* at p. vi.

[12] *See RA Comments* at pp. 4, 16-17.

[13] *See SDPUC Comments* at p. 2.

In its comments, NTCA cites national statistics:

> The average population density for a rural telephone company study area is only 13 persons per square mile compared with105 persons per square mile in [a] non-rural carrier study area. On average, non-rural carriers serve 128 lines per square mile, while rural carriers serve 19 lines per square mile – a ratio of nearly seven to one. As a direct result of greater population dispersion, rural carriers average far fewer lines per local switch – 1,254, compared to an average of 7,188 for non-rural carriers. Rural carriers invest an average of just over $5,000 per loop, while non-rural carriers invest approximately $2,800.[14]

South Dakota RLECs serve on average 2.4 access lines per square mile.[15] Compare this to the national RLEC average of 19 and the non-rural LEC average of 128 cited above. Population density has a significant impact on RLEC cost of service.

2. <u>Network Cost Recovery – Three-Legged Stool</u>

A three-legged stool has long served metaphorically to describe RLECs' network cost recovery sources; i.e., local service revenues, access revenues and universal service funding. The Rural Alliance points to the need to be sensitive to the balance among the network cost recovery sources in making decisions regarding intercarrier compensation:

> Consistent with [the three-legged stool] analogy, all "legs" must be strong and stable enough for the stool – in this case, network cost recovery – to remain balanced and viable. A loss or large reduction in any of these sources will cause the stool to wobble, if not outright collapse. To that end, the reductions in current intercarrier compensation revenues that are likely a result of this proceeding must be replaced by additional universal service support or other mechanisms to maintain the standards of affordability and comparability required by . . . the Act.[16]

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[14] *See NTCA Comments* at pp. 15-16.

[15] *See infra* Appendix I at p. 7.

[16] *See RA Comments* at pp. 72-73.

C. Rural LECs Cannot Rely Solely on End-User Revenues and USF for Cost Recovery

Mandatory bill and keep would likely be fatal to SDTA members and other RLECs as there is no plausible method available to make up for the removal of a major source of network cost recovery. Shifting cost recovery from access to end-user revenues and universal service is not feasible. In its comments, NTCA quantifies this shift, noting, ". . . [P]ure bill and keep would shift over $2 billion from intercarrier compensation to end users and universal service support."[17] A study of the impact of loss of access revenue (a result of pure bill and keep) for SDTA member companies[18] reveals the following losses of access revenues:

- Intrastate Access
  - $35,557,278 annually
  - $21.38 (average) per access line per month
- Interstate Access
  - $31,918,017 annually
  - $19.19 (average) per access line per month
- Total Access
  - $67,475,295 annually
  - $40.57 (average) per access line per month

Both NTCA's and SDTA's studies clearly illustrate why shifting cost recovery from access revenues to end users or universal service is not feasible.

Further, as the Rural Alliance points out, "Failure to permit the application of charges to those carriers and their customers who utilize networks to originate and terminate telecommunications will inevitably lead to a recovery of the associated costs from alternative sources, thereby inappropriately subsidizing the services of those carriers that interconnect to and use [LEC] networks."[19]

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[17] *See NTCA Comments* at p. 12.

[18] 95% of SDTA member company access lines included in calculation. (Data unavailable for SDTA member companies Ft. Randall and Mt. Rushmore.)

[19] *See RA Comments* at p. 27.

1. Burdening Universal Service Will Destabilize the Fund

In its comments in this proceeding, NTCA states, "At the end of the day, the Commission must gauge the success of its reform by the extent to which it preserves universal service."[20] The Rural Alliance agrees:

> The stability of the universal service fund is a keystone public policy goal and a primary Rural Alliance principle. . . [A]voiding undue pressure on the universal service fund is critical. Bill-and-keep plans, by eliminating a major element of rate design, inevitably subject the universal service fund to unwarranted pressure. The ICF plan creates undue pressure on the universal service fund in two ways: the plan eliminates an element of cost recovery, and it allows certain companies to reap windfalls from expense reductions resulting from intercarrier compensation reform. The Western Wireless plan also moves to bill and keep and divorces universal service funding from cost principles, which will result in long-term insufficient funding levels.[21]

An internal study reveals that, currently, a total of $4,287,189 in monthly high cost support is directed to the areas served by the SDTA member companies, an average of more than $30 per access line per month. If current access revenues are shifted to the universal service fund for recovery, the monthly per access line amount required from universal service funding would need to exceed $70, an increase of over 130 percent.

2. End Users Cannot Absorb Access Loss

If access revenues are lost through bill and keep and the universal service fund can not be sustained, then end users will be left to "pick up the slack" either through higher local service rates or through increased Subscriber Line Charges ("SLCs"). On this subject, NTCA says:

> Any new rules that impact SLCs, or establish [local service] benchmarks must be promulgated in accordance with the law's universal service "comparability" requirements. Section 254(b)(3) provides that consumers in rural and high-cost areas should have

[20] *See NTCA Comments* at p. 16.

[21] *See RA Comments* at pp. 18-19.

> access to telecommunications services and information services, including advanced telecommunications and information services, that are priced reasonably and comparably to similar services available to consumers in urban areas. Similarly, Section 151 of the Act provides that all Americans, as far as possible, should have access to telecommunications services at reasonable charges. Thus, if the Commission subjects rural ILECs to mandatory decreases in intrastate and interstate access charges and increases in end-user rates, it must insure that consumers living in rural, insular and high-cost areas have access to telecommunications and information services at rates that are reasonably comparable to those services and rates available to consumers living in urban areas.
>
> Any new increases in end-user rates must consider the impact on high-cost consumers and their ability to afford comparable telecommunications and information services. "If rates are too high, the essential telecommunications services encompassed in universal service may indeed prove unavailable." If rates increase, it is conceivable that some households in high-cost rural areas that do not qualify for Lifeline and Linkup support would no longer be able to purchase telecommunications and/or information services. Raising end-user rates too high could also jeopardize the President's goal of making affordable high-speed Internet access available to all Americans by 2007, and the Act's goal to encourage the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis. The Commission must therefore be very sensitive to subscriber rate increases and continue to ensure affordable and comparable rates to all Americans.[22]

SDTA's internal study of the impact of moving access cost recovery to local service charges illustrates how untenable such an action would be; the average rural South Dakota LEC local service rate would increase from $15.28 per month to $57.65 per month.[23]

[22] *See NTCA Comments* at pp. 24-25.

[23] Monthly rates do not include SLCs.

The Rural Alliance also stresses the comparability requirement in discussing a shift in revenues, ". . . [C]omparability standards limit the amount of increases that can be imposed on customers in the form of higher end-user charges or SLCs."[24]

Finally, the SDPUC weighs in on this matter:

> In order to achieve the goal of reasonable and affordable rates, especially for rural consumers, the SDPUC urges the Commission to resist the temptation to just shift costs onto the end user. Indeed, one of the reasons that the SDPUC is opposed to bill and keep is the likely result of higher subscriber line charges . . . to consumers. For example, one of the proposals that advocates a transition to a bill and keep regime would increase the SLC cap on the LEC to $10.00 in areas served by non-rural carriers and up to $9.00 in areas served by certain rural carriers. The Western Wireless proposal includes similar increases and, at the end of a four year transition, the SLC would be deregulated for any incumbent LEC that is able to demonstrate that it is subject to competition.
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> The SDPUC is opposed to proposals that increase the SLC in order to set an access rate of zero. The use of a carrier's underlying network is a cost of doing business. These costs should be reflected in rates charged to all system beneficiaries, not add-ons to end user rates in the guise of "government-mandated" charges.[25]

D. Legal Issues

Not only does bill and keep fly in the face of long-standing sound public policy, it also raises serious legal concerns.

1. <u>Section 254(k) of the Telecommunications Act of 1996</u>

NTCA takes issue with the legality of bill and keep. It says, "In accordance with Section

[24] *See RA Comments* at p. 73.

[25] *See SDPUC Comments* at pp. 10-11.

254(k) of the Telecommunications Act of 1996, allowance must be made for sharing of joint and common costs."[26]

The Rural Alliance agrees saying:

> As a matter of policy and law, the Commission has always recognized that both carriers and their customers benefit from utilization of the [RLECs'] network to originate and terminate telecommunications [and that] [f]undamental to the establishment of rational rate structures for any RLEC is the concept of jurisdictional and service allocation of joint and common costs. . . While the establishment of connectivity to the nationwide switched telephone network is of benefit to the customer ordering the connectivity, it is a fundamental rate-making principle that all others who can use the same plant to call and be called by the customer also benefit.
>
> This basic and essential principle is grounded in established policy and law that cannot be overlooked or overturned in this proceeding.[27]

2. <u>Bill and Keep Will Result in an Illegal Taking</u>

NTCA points to another legal issue raised by the imposition of bill and keep, "The elimination of all access charges and reciprocal compensation while retaining obligations for LECs to interconnect with and originate and terminate traffic for other telecom providers amounts to taking property without compensation. It is nothing more than granting non-owners of LEC facilities free use of those facilities."[28] Such free use would be an illegal taking of the RLECs' networks.

[26] *See NTCA Comments* at p. 9.

[27] *See RA Comments* at p. 26.

[28] *See NTCA Comments* at p. 19.

III. The Concept of RSPP and Current Law are the Foundation for Interconnection Rules

SDTA believes that any interconnection rules must be crafted by incorporating the concept of "Retail Service Provider Pays" ("RSPP"). RSPP, coupled with current law, will provide a solid foundation for network interconnection rules that do not advantage one party over another.

A. The Record Supports the Continued Application of the RSPP Concept

SDTA supports the Rural Alliance's concept of "Retail Service Provider Pays" ("RSPP") and urges the Commission to reassert RSPP's applicability to any intercarrier compensation regime. RSPP is the "principle that the Retail Service Provider ("RSP") benefits from the use of the network and is thus responsible for compensating network providers for such use."[29] This same belief is also echoed by both the South Dakota Public Utilities Commission when it states that "the use of the infrastructure by others requires compensation"[30] and NTCA when it states that "the retail service provider should pay when it uses the network functionality of another carrier."[31]

The Rural Alliance also believes, and SDTA concurs, that RSPP is already reflected in existing interconnection rules which recognize not only that the RSP must compensate network providers for using their networks but also recognizes the appropriate retail/wholesale relationships that underlie the determination of the RSP.[32] For example, an IXC in South Dakota or, indeed, anywhere in the country, rarely has a physical connection to its end-user customers on

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[29] *See RA Comments* at p. 94.

[30] *See SDPUC Comments* at p. 2.

[31] *See NTCA Comments* at p. 7.

[32] *See RA Comments* at p. 94.

either side of the call. In order to reach that customer, the IXC utilizes the facilities of LEC networks. The LEC is acting merely as the wholesale provider to the IXC, which in turn acts as the retail provider to the end-user customer.

Some Commenters to this proceeding argue that the access charge regime should be eliminated and all traffic should be categorized as reciprocal compensation traffic and governed by Section 251(b)(5) of the Act. SDTA believes this assertion is incorrect. SDTA agrees with the Rural Alliance when it says the "two different service and carrier relationships [access and reciprocal compensation] cannot be logically 'harmonized' under a single network interconnection framework."[33] Not only does access recognize the proper retail/wholesale relationship between IXCs and LECs, it is also an essential element of cost recovery for SDTA members. The LECs provide origination and termination functionality to the IXC, but the IXCs provide no functionality in return. It is clear from this structure that an IXCs relationship is NOT reciprocal.

B. Compensation Obligations are Clear in Law

1. There is No Compensation Obligation for RLECs to Transport Traffic Outside of Their Service Areas

SDTA asserts that the proposals submitted by Western Wireless, several of the CLECs and the ICF (with regards to companies that use a Centralized Equal Access arrangement) are flawed because they attempt to mandate that LECs (rural LECs in particular) deliver traffic to a point outside of their local service area. Western Wireless, for example, wants to require all LECs to deliver traffic to it at a single Point of Interconnection ("POI") per LATA (in this case, the RBOC tandem).

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[33] *Id*. at p. 97.

Under the Act, an ILEC is only required to establish an interconnection with a requesting carrier "at any technically feasible point within the carrier's network."[34] Additionally, as highlighted by the Rural Alliance, the Act "requires an ILEC to provide interconnection services and arrangements at least equal to those that the LEC provisions for itself, but does not require superior arrangements to be designed and provisioned at the request of a competitive carrier. The U.S. Supreme Court and the Eighth Circuit Court of Appeals have agreed."[35] If a South Dakota RLEC were to transport and deliver traffic as suggested by the ICF and others, it would, indeed, be provisioning an interconnection arrangement superior to its own.

It is the belief of SDTA, as well as NTCA, that "[r]ural ILECs serve specific geographic areas and should not be compelled to carry traffic outside their designated local service area."[36] NTCA further buttresses it's legal argument by stating that "interconnection negotiations and agreements between an RBOC and a CMRS carrier that exclude the rural ILEC, but directly impact the rural ILEC's network costs not only would violate Section 251, but also the basic principles of contract law (offer, acceptance and consideration)."[37] Western Wireless' proposal would in effect allow negotiations to be undertaken between the CMRS carriers and the RBOC. The results of these negotiations would directly affect the rights and responsibilities of the rural ILECs.

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[34] 47 U.S.C § 251(c)(2)(B). Further, this Section 251(c) interconnection requirement would only be applicable to those rural telephone companies that no longer have an exemption from the requirement pursuant to Section 251(f)(1).

[35] *See RA Comments* at p. 105.

[36] *See NTCA Comments* at p. 12.

[37] *See NTCA Comments* at p. 42.

2. The IntraMTA Rule should be Eliminated

An additional area of concern for SDTA and the entire state of South Dakota is the existence of the IntraMTA rule for CMRS traffic. This rule places certain IntraMTA traffic exchanged between wireline carriers and CMRS carriers into the Section 251(b)(5) reciprocal compensation regime as opposed to the access charge regime. In the ICC FNPRM, the Commission sought comment on whether the intraMTA rule should be retained.[38] SDTA believes the IntraMTA rule should be eliminated. The Rural Alliance is correct in its statement that "the intraMTA rule creates artificial distinctions between calls, confusion among carriers and regulators, and results in an inconsistent application of reciprocal compensation and access charges."[39] It further states that"[t]he environment created by the intraMTA rule is incompatible with the Commission's goal of moving towards a more unified regime."[40]

IV. The Shifting of Transport Obligations to RLECs and Their Subscribers is Critically Flawed

NTCA recognizes the complexities associated with states like ours in its comments in this docket. It states:

> If rural companies operating in low density, geographically challenging markets are not adequately compensated for the costs imposed on their networks, rural end users will see an unacceptable increase in their rates and rural carriers will be economically incapable of continuing to provide service.[41]

[38] *See ICC FNPRM* at ¶ 136.

[39] *See RA Comments* at p. 127.

[40] *Ibid*.

[41] *See NTCA Comments* at p. 50.

A. Transport Costs are Traffic and Distance Sensitive

1. South Dakota Companies Face Long Transport Routes and High Costs

As a result of South Dakota's geographical and demographic characteristics the issue of transport obligations is of central importance to SDTA members and, indeed, the entire state of South Dakota. Western Wireless' proposal would shift all transport obligations between the LEC local service area and one RBOC tandem per LATA to the LEC for recovery.[42] Rural LECs in states such as South Dakota would be severely impacted by such a proposal. These areas are characterized by the long transport distances and high costs associated with the provision of service. For example, the average distance between the South Dakota Networks ("SDN") tandem and the RLECs' toll connection points is 145 miles and the average distance between those points and the rural LECs' end offices is 29 miles.[43] In some instances, toll connection points are over three hundred miles from the SDN tandem; e.g., Hot Springs – 337 airline miles and Bison – 312 airline miles. The distance between the toll connection point and an RLEC's end office can also be extreme; e.g., the distance from the Kadoka toll connection point to its Dell Rapids end office is approximately 220 airline miles.

2. The ICF Ignores Transport Costs Behind the Edge

The ICF plan attempts to placate its critics by allowing Covered Rural Telephone Carriers ("CRTCs") to charge a terminating transport charge of $0.0095 per minute.[44] In reality, this rate would be far too low to provide any meaningful cost recovery to most CRTCs, especially those with long transport distances and high costs. As stated by the Rural Alliance:

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[42] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of Western Wireless Corporation and Suncom Wireless, Inc., (filed May 23, 2005) at pp. 19-20.

[43] *See SDPUC Comments* at p. 7.

[44] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the Intercarrier Compensation Forum (*"ICF Comments"*), (Filed May 23, 2005) at p. 35 and Appendix D at p. 38.

> Under the ICF plan, the $0.0095 per minute rate was only meant to compensate a LEC for the portion of its network between the meet point and the LEC's edge. The remaining portion of the network, between the edge and the rest of the LEC's end offices, is subject to bill and keep. For RLECs, the distances involved can be substantial – even hundreds of miles. [45]

The attached White Paper, "Distance Sensitivity of Rural Telephone Company Transport Networks" and the accompanying Map detail the distances traffic is transported in South Dakota. From the SDN tandem to the toll connection points, 2,550 miles of fiber is utilized. More than 5,000 miles of additional transport is required to connect the toll connection points to end offices within the RLECs' service areas.[46]

The $0.0095 per minute access rate fails to recognize the traffic sensitive nature of transport and termination. Further, it is an arbitrary rate with no cost basis. SDTA agrees with NTCA when it states that "generally speaking, rural carriers must transport calls over much greater distances than do non-rural carriers. At the same time, many more urban users mean that transport costs may be spread over a much larger base."[47] The ICF plan does, however, succeed in creating an unfair competitive advantage for IXCs. By moving facilities costs currently paid by IXCs through access charges to the LECs, the IXCs no longer have that burden. Accordingly, "IXCs thus have a competitive advantage relative to other long-distance providers, such as [CMRS] or facilities-based Voice of Internet Protocol ("VoIP") providers, which operate their own local network."[48]

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[45] *See RA Comments* at p. 56.

[46] *See infra* Appendix I at p. 7.

[47] *See NTCA Comments* at p. 39.

[48] *See RA Comments* at p. 65.

B. The ICF Plan Discriminates Against Both Users and Providers of Centralized Equal Access

Under the ICF plan, however, SDTA members would be unable to collect even the small amount allowed by the ICF terminating transport charge because "years ago our rural companies formed the [South Dakota Networks] ("SDN"), a centralized equal access provider, to bring the benefits of long distance equal access to the companies' rural customers."[49] If a CRTC uses a centralized equal access tandem, the ICF plan requires that the tandem be designated as its "edge." As stated earlier, the average distance between the SDN tandem and rural LEC end offices is 174 miles. The SDPUC further states that "this [the ICF] proposal inexplicably ignores the real costs that a rural carrier has in transporting traffic to the SDN CEA tandem….Transporting traffic over these long distances should not be treated as a no-cost service when, in fact, this service is an additional operation with its own costs when compared to states without centralized equal access."[50]

The ICF is blatantly attempting to discriminate against centralized equal access states and force companies to subtend the RBOC tandem as opposed to the CEA tandem. Not only does ICF make the LEC responsible for transporting its own originating traffic to the CEA tandem, it also places the financial burden for transporting any TERMINATING traffic on the LEC as well.[51] As indicated by the Rural Alliance:

> When a CRTC connects indirectly with an IXC (a non-hierarchical) carrier through an access tandem with equal access functionality, the CRTC is responsible for *all* transport on its side of the CEA tandem. On the other hand, when a CRTC connects indirectly with an IXC through an access tandem that is *not* the source of equal access functionality, the IXC's financial obligations

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[49] *See SDPUC Comments* at p. 7.

[50] *Ibid.*

[51] *See ICF Plan* at p. 19.

> include transporting terminating traffic to the CRTC's edge and transporting originating traffic from a point within the CRTC's serving area to the transit provider.[52]

In addition to the transport discrimination, the ICF plan also bans CEA tandem operators from charging the IXCs for transiting. The ICF is not even endeavoring to disguise its bias. RBOC tandems are expressly allowed to charge a tandem transit charge that increases over time (while all other charges tend to be decreasing or disappearing) for the same exact transiting functionality being provided by a CEA tandem. SDTA concurs with the SDPUC in saying that "this proposal is neither technologically or competitively neutral. Our rural carriers should not be penalized for being progressive through their establishment of a joint backbone network and CEA tandem."[53] The Rural Alliance also expresses concern with the ICF plan when it comments that "[b]y disadvantaging LECs that use a CEA tandem, the ICF creates unfair and unwarranted incentives to use RBOC transiting."[54]

Under the ICF plan, transport and termination costs associated with RLECs using a CEA tandem can be recovered from end users. For the reasons discussed earlier regarding the high costs and long distances associated with rural transport and termination and the inability to raise end-user rates to a level sufficient to recover all the costs, end-user recovery of the entire amount is not even worth considering. The ICF is naïve in its proposal of such a cost recovery mechanism without fully understanding the impact in rural states such as South Dakota.

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[52] *See RA Comments* at p. 61.

[53] *See SDPUC Comments* at p. 7.

[54] *See RA Comments* at p. 61.

V. Conclusion

SDTA supports the positions expressed by NTCA, the Rural Alliance and the SDPUC. These commenting parties recommend that any new intercarrier compensation plan be developed so as to encourage investment in rural telecommunications infrastructure, protect affordable end-user rates and provide for the sustainability of universal service. Mandatory bill and keep does none of these things.

Bill and keep destroys the Retail Service Provider Pays concept that is the foundation for interconnection between local exchange carriers and interexchange carriers (Retail Service Providers). Not only would enactment of bill and keep overturn the long-standing solid public policy of cost causers sharing in the paying of network costs, it would also violate Section 254(k) of the Telecommunications Act of 1996. Given the high transport costs inherent in providing service in a sparsely populated rural state like South Dakota, failure to develop an intercarrier compensation regime that includes access charges would threaten the viability of the rural local exchange carriers that serve the state and violate the Act's comparability requirements. Further, the ICF Plan, a bill and keep regime, discriminates against CEA providers such as the South Dakota Network.

RLEC network cost recovery has long depended on intercarrier compensation in the form of access charges, end-user revenues and universal service funding. Shifting network cost recovery from access to end-user revenues and universal service funding would, again, violate the comparability requirement of the Act and would destabilize the universal service fund.

SDTA urges the Commission to adopt an intercarrier compensation plan that will allow for the provisioning of comparable telecommunications service to South Dakota's rural consumers and sustain rural networks.

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Respectfully submitted,

South Dakota Telecommunications Association

By:

Richard D. Coit
Executive Director and General Counsel
South Dakota Telecommunications Association
320 East Capitol Avenue
Pierre, SD 57501
(605)224-7629

Certificate of Service

I hereby certify that the foregoing Reply Comments of the South Dakota Telecommunications Association were submitted via the FCC Electronic Comment Filing System on the 20th Day of July, 2005 directed to the attention of:

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

Copies were also sent electronically to the following persons, directed to the stated e-mail address.

Ms. Victoria Goldberg
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
Room 5-A266
Washington, DC 20554
Victoria.goldberg@fcc.gov

Commission's Copy Contractor
Best Copy and Printing, Inc. (BCPI)
Portals II
445 12th St. SW, Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Richard D Coit
Executive Director and General Counsel
South Dakota Telecommunications Association
320 East Capitol Avenue
Pierre, SD 57501
(605)224-7629