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 RURAL TELEPHONE SERVICE COMPANY, INC.

Rural Telephone Service Company, Inc. ("RuralTel"), by its undersigned attorneys, hereby submits its comments on the intercarrier compensation reform plan (the "Missoula Plan") filed with the Federal Communications Commission ("FCC" or Commission") on July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation ("NARUC Task Force"). While the Missoula Plan presents a good starting point for creating an industry-wide solution to the many complex issues surrounding intercarrier compensation, RuralTel urges the Commission to carefully consider the impact that certain portions of the Missoula Plan will have on small rural incumbent local exchange carriers ("ILECs").

RuralTel submits that the Missoula Plan's proposal to retain the Track classification of the seller as a result of acquisitions occurring after August 1, 2006, would be an undue hardship for rural ILECs, such as RuralTel. Such a requirement would be administratively burdensome because rural ILECs acquiring exchanges from larger ILECs could be in the position of having to implement combinations of Track 3, Track 2, and Track 1 access lines in the same study area. Such a regulatory scheme would discourage rural carriers from taking over service from larger ILECs, which would hinder the growth of high-quality and innovative services in historically underserved rural markets.

In support hereof, RuralTel states as follows:

I. BACKGROUND

RuralTel is an incumbent local exchange carrier incorporated under the laws of the State of Kansas. Its principal offices are located at 145 N. Main Street, Lenora, Kansas 67645. The company is a rural telephone company that serves approximately 10,376 customer access lines in the following Kansas exchanges: Agra, Alton, Athol, Collyer, Damar, Edmond, Galatia, Gaylord, Gove, Grainfield, Hill City, Jennings, Kensington, Lenora, Logan, Long Island, Morland, Natoma, Olmitz, Palco, Prairie View, Quinter, Rexford, Selden, Victoria, WaKeeney, Woodruff, Woodston, and Zurich.

In 2004, RuralTel began discussions with Embarq to acquire more than 5,000 access lines in ten (10) rural Kansas exchanges. On April 7, 2006, RuralTel and Embarq filed a Joint Petition for waiver of the study area definition to enable RuralTel to include those exchanges in RuralTel's existing study area.[1] Although the study area wavier is currently pending, the Commission approved the Section 214 application for the RuralTel/Embarq transaction on June 1, 2006,[2] which allowed the parties to consummate the transaction. That transaction has closed and RuralTel now operates those acquired access lines, albeit without the study area waiver necessary for RuralTel to receive federal universal service support for the acquired exchanges.

II. PROPOSED REVISIONS TO ACCOMMODATE ACQUISITIONS BY RURAL ILECS

Rural ILECs are, from time to time, presented the opportunity to acquire rural markets served by larger ILECs. Such acquisitions present unique opportunities for rural ILECs to expand their market area and subscriber base, and to bring high-quality and innovative telecommunications services to rural subscribers that may have historically been underserved by

[1] *See Public Notice*, DA 06-941 (rel. Apr. 27, 2006).

[2] *See Public Notice*, DA 06-1185, WC Docket No. 06-80 (rel. June 1, 2006).

the large ILECs due to the challenges of providing telecommunications services in high-cost rural areas.

The Missoula Plan proposes a rule, set forth on Page 6, Paragraph c.ii of the Plan, that requires lines acquired from other carriers after August 1, 2006, to retain the Track classification of the selling carrier (the "Track Retention Rule"). A rule that has a retroactive effective date raises questions from inception, especially when new proposed intercarrier compensation rules are just beginning to be formulated, and a long period of time may pass before any final document is approved. Carriers such as RuralTel that have engaged in acquisitions after August 1, 2006, have only done so after careful consideration of the financial and regulatory implications associated with those transactions.

RuralTel started the process of acquiring the ten (10) Embarq exchanges in 2004, which is well before the Track Retention Rule was announced in the Missoula Plan proposal. Should the Track Retention Rule be adopted without modification, rural ILECs, such as RuralTel, that have acquired exchanges from large ILECs and relied on the current regulatory regime would have the assumptions in their business plans thrown into chaos as a result of the retroactive effect of the rule, and the additional regulatory and administrative burdens imposed on those companies. Indeed, adoption of the Track Retention Rule raises issues of retroactive rulemaking, which call into question whether such a rule could be validly adopted in the first place.

The negative impact of the proposed Track Retention Rule can be seen in the case of RuralTel's acquisition of lines from Embarq. In that case, RuralTel would be classified as a Covered Rural Telephone Company ("CRTC") Track 3 ILEC, and Embarq would be classified as a CRTC Track 2 ILEC (Kansas) under the Missoula Plan. The proposed Track Retention Rule imposes several onerous administrative and economic burdens upon RuralTel. If the access lines acquired from Embarq are classified as Track 2 access lines, there will be different access rates, subscriber line charges ("SLCs"), and restructure mechanism ("RM") calculations for access lines within RuralTel's existing study area. The different rules for different access lines within a single study area will be difficult to administrate, costly to implement, cause customer confusion and is not workable.

Today, RuralTel is a NECA member and participates in the many benefits of NECA's administration of the FCC's access charge plan. NECA helps RuralTel meet consumer demand for high quality voice, data and broadband service capabilities and provides administrative cost synergies to RuralTel. The Track Retention Rule would make it administratively difficult for RuralTel to participate in the NECA system with both Track 3 and Track 2 access lines within a single study area. Also, if a CRTC Track 3 ILEC acquires access lines from a Track 1 ILEC after August 1, 2006, the Missoula Plan makes no allowance for these acquired lines to participate in the NECA process.

The Missoula Plan's proposed Track Retention Rule and the August 1, 2006 grandfather date inflicts unwarranted harm upon rural consumers, RuralTel, and all other rural ILECs who plan to grow their business through acquisitions. This rule would discourage rural ILECs from making acquisitions and investing in facilities to provide quality telecommunication services for historically underserved rural areas due to the burdens imposed on small ILECs. RuralTel believes that a small company exception to the proposed acquisition track classification rule must be added to the Missoula Plan in order to avoid these negative repercussions.

In the past, the FCC has been sensitive to reducing the regulatory burden for small telephone companies. For example, the Commission amended Parts 1, 61, and 69 of its Rules, 47 C.F.R. Parts 1, 61, 69, to reduce some of the tariff filing requirements otherwise applicable to small local exchange carriers.[3] The FCC did so because it determined that large companies have sufficient administrative resources and economies of scale to satisfy greater regulatory burdens, while these advantages are not available to small telephone companies.[4] Accordingly, the Commission adopted Section 61.39 of its rules to permit streamlined regulation for ILECs serving fewer than 50,000 access lines.[5]

The Commission has similarly relaxed its so-called "all-or-nothing rule"[6] regarding the treatment of study areas involving lines acquired by a rate-of-return company from price cap carriers by way of Section 61.41(e).[7] The Commission adopted the all-or-nothing rule in order to prevent a carrier from shifting costs from its price cap affiliate to its rate-of-return affiliate, and to prevent carriers from gaming the system by switching back and forth between the two different regulatory regimes.[8] The FCC determined that relaxation of its all-or-nothing rule when a rate-of-return carrier acquires price cap lines but intends to operate all of its lines,

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[3] *See Regulation of Small Telephone Companies*, Report and Order, 2 FCC Rcd 3811 (1987); *Regulation of Small Telephone Companies*, Order, 3 FCC Rcd 5770 (1988).

[4] *Regulation of Small Telephone Companies*, Report and Order, 2 FCC Rcd 3811, ¶ 9 (1987).

[5] Section 61.39, 47 C.F.R. § 61.39, allows a rate-of-return carrier with 50,000 lines or fewer to file tariffs every two years based on its demand and cost data from the previous two years to develop its rates for the subsequent two-year tariff period. These small rate-of-return carriers are not required to file the cost-support materials required by Section 61.38, 47 C.F.R. § 61.38, with their tariff filing.

[6] Section 61.41 of the Commission's rules provides that if a price cap carrier is in a merger, acquisition, or similar transaction, it must continue to operate under price cap regulation after the transaction. 47 C.F.R. § 61.41(c)(1). In addition, when rate-of-return and price cap carriers merge or acquire one another, the rate-of-return carrier must convert to price cap regulation within one year. 47 C.F.R. § 61.41(c)(2). Furthermore, if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also convert to price cap regulation, except for its average schedule affiliates. 47 C.F.R. §§ 61.41(b), 69.605. Finally, LECs that become subject to price cap regulation are not permitted to withdraw from such regulation or participate in NECA tariffs. 47 C.F.R. §§ 61.41(d), 61.41(a)(3). These regulatory requirements collectively are referred to as the "all-or-nothing rule."

[7] 47 C.F.R. § 61.41(e).

[8] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 ¶ 12 (2004).

including the newly acquired price cap lines, under rate-of-return regulation, was warranted because such a situation did not implicate the issues sought to be addressed by the rules.[9]

Similar reasoning applies to warrant an exception to the proposed Track Retention Rule for rural ILECs that acquire Track 1 or Track 2 lines, but operate the remainder of their study area under Track 3. The acquisition of lines from larger ILECs by rural ILECs are not done for the purpose of gaming the system, or shifting costs to other affiliates. Rather, rural ILECs enter into those transactions because they seek to expand their subscriber base through strategic acquisitions or mergers, and can be more effective than the selling carrier in providing telecommunications service in rural areas. An exception to the Track Retention Rule for small carriers serving less than 50,000 is warranted. Specifically RuralTel urges the Commission to revise the Missoula Plan to treat Track 1 and Track 2 access lines acquired by an ILEC serving fewer than 50,000 access lines as Track 3 access lines. This will encourage rural ILECs to enlarge their service base through strategic transactions, and to continue the expansion of high-quality innovative telecommunications service in rural areas.

III. <u>CONCLUSION</u>

Small telephone companies, such as RuralTel, will suffer the greatest burden if forced to obtain waivers from the FCC or administer combinations of Track 3, Track 2 and Track 1 access lines in the same study area. Accordingly, consistent with current FCC policies embodied in Sections 61.41(e) and 61.39, RuralTel urges the Commission to revise the Missoula Plan to treat Track 1 and Track 2 access lines acquired by an ILEC serving fewer than 50,000 access lines as Track 3 access lines to avoid imposing unnecessary and burdensome regulations and administrative requirements on small rural ILECs.

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[9] *Id.* ¶ 13.

Respectfully submitted,

/s/

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