

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

In the Matter of:

Establishing Just and Reasonable Rates
for Local Exchange Carriers

WC Docket No. 07-135

**COMMENTS OF THE RURAL IOWA INDEPENDENT
TELEPHONE ASSOCIATION**

In its Notice of Proposed Rulemaking adopted October 2, 2007, the Commission seeks comments in its initiation of a “rulemaking proceeding to consider whether the current rules governing the tariffing of traffic-sensitive switched access services by local exchange carriers (LECs) are ensuring that rates remain just and reasonable.” This docket arises from allegations that rural independent companies have been increasing the amount of interstate access to the company by offering chat line, conference bridging and other similar services.

RIITA is a non-profit association of rural independent telephone companies, representing approximately one hundred and thirty Iowa incumbent local exchange carriers. RIITA’s membership is limited to companies that serve fewer than 20,000 access lines. In reality, most members actually serve far fewer than 20,000 access lines and many serve fewer than 1000 lines. All members serve high-cost rural exchanges.

Factual Background. In paragraph 13, the Commission seeks comment on the “prevalence of these types of operations.” RIITA supports the idea that an inquiry or rule making on this issue should begin with an investigation of the prevalence of the operations. Unfortunately, “these types of operations” is unnecessarily vague and should be clarified. Despite that vagueness, it is readily apparent that the activities being discussed in this NPRM are engaged in by relatively few companies when compared to the number of independent LECs in any state or throughout the country. The small number of companies involved does not, by itself, justify the practices, but it highlights that the extraordinary amount of press and litigation attention that has been directed to chat lines, conference bridges and similar types of services is disproportionate to its impact. These services have been offered by larger carriers in the past and the entry into these markets by a handful of small carriers should not create the alarm that has been “stimulated” by larger carriers that also offer these services and that have chosen inflammatory language over facts and reason.

Legitimacy of Traffic. In footnote 39 of the NPRM, the Commission takes no position on the appropriateness of the services, but instead confines this docket to the reasonableness of the rates. RIITA urges the Commission to continue to approach the issues in this docket from a “reasonableness of rates” perspective. In the process, RIITA also urges the Commission to confirm that there is nothing inappropriate or illegitimate to

a company offering chat line, conference bridge and similar types of services. Large carriers would have the Commission assume that something inappropriate is happening whenever usage suddenly increases. Instead, RIITA asks the Commission to assume that the independents offering chat line or conference bridge services address a market need and are selling services to customers that are not being offered by other carriers. The high quality of service offered by independent telecommunications carriers could as easily be of value in the market place; one need not begin with the assumption that nefarious motives should be attributed to independent carriers. In a market economy (even in regulated markets), companies that can develop new services, better market existing services or offer variations on existing services will gain customers. RIITA believes that the correct line of inquiry for a rate-of-return carrier is whether the carrier is earning an appropriate rate-of-return, not the number of its customers or the volume of its traffic.

This does not mean that the Commission should ignore traffic spikes, gradual or sudden traffic pattern changes. On the contrary, it merely means that the issue should be taken up as a rate issue. RIITA urges the Commission to affirm and clarify its recent ruling that the traffic involved in these matters is not improper. *See In the Matter of Qwest Communications Corporation, Complainant, v. Farmers and Merchants Mutual Telephone Company, Defendant*, File No. EB-07-MD-001, FCC 07-175, Memorandum Opinion and Order (rel. Oct. 2, 2007).

Just and Reasonable Rates. The Commission raises the primary economic concerns underlying this docket in paragraphs 14 and 15 of the NPRM, inviting comment on the analysis. The analysis, itself, is reasonable, however two issues are not addressed. One, though rate-of-return may turn out to be either greater or less than the targeted rate, the NPRM contains no factual study of how frequently either occurs. RITA believes that for many small independents, the rate-of-return is lower than the target rate.¹ Two, the Commission has not identified, even roughly identified, the number of companies falling within its statement that “some LECs are experiencing dramatic increases in demand for switched access services.” NPRM, ¶ 14. The vagueness of the word “some” is critical because the smaller that number, the less it seems reasonable to burden the remaining companies with new rules designed to address a specific practice.

Likewise, the Commission’s statement that if local switching demand increases significantly, a carriers’ rate of return “at some point is likely to exceed the maximum allowed rate of return,” is based on an assumption that the carriers’ rates of return were close to the allowed or approaching the maximum rate. That may or may not be true in a

¹ In footnote 38, the Commission states that it need not address reductions in demand because carriers may make a carrier-initiated tariff filing whenever they want. The Commission presumes that a carrier would do so if its rate of return were to decline. This presumption is not always true. Not only do many small carriers earn below the target rate-of-return, other factors work to keep rate of return low for small local carriers, whether it is because they are cooperatives or just very small local companies that have a primary emphasis on serving their community instead of maximizing return on investment.

given situation and the Commission should address the reality of an individual company's rate of return, not plural carriers' rates of return.

RIITA cautions that the cost of providing telecommunications services is very high and additional regulatory burdens should only be developed carefully and be carefully tailored.

Specific Rate Issues. The Commission raises a number of specific rate-related issues; RIITA will comment on a few of those issues. First, the tariffed language discussed in paragraph 21 is likely to trigger revised rates in situations in which rates should not be revised. As noted by the Commission later in the NPRM, setting a trigger on a one-month differential fails to take into consideration any number of emergency or one-time situations that could spike traffic, with a following decline. At minimum, the relevant test-period for a trigger should be the similar quarter from the previous year, probably a longer period would be appropriate. Second, and contrary to the Commission's statements in paragraph 22 of the NPRM, the percentage variation *should not* be smaller as the measurement period is lengthened. The purpose of lengthening the period is to adjust for one-time spikes. If the percentage change is lowered at the same time, the purpose of lengthening the period is defeated.

More importantly, using a percentage change measurement, *by itself*, overstates an increase in traffic for very small companies. The average size of RIITA member-

companies is approximately 1200 access lines. Large companies complaining about access minute changes invariably phrase the changes in percentages because even though the actual change in traffic or lines may be a small number, it seems large compared to the previous traffic of the company. Any measurement of traffic should be in absolute terms, preferably minutes of use per access line, or some other actual measurement. The proposed tariff language should be changed to stop the comparison inevitably made by large carriers.

Additionally, RIITA believes it is unnecessary and counter-productive to have carriers file certifications regarding access stimulation. Unless the term is carefully defined, companies will have difficulty determining whether the rule applies. Furthermore, the certification is based on the assumption that all traffic increases are inherently bad, despite the fact that increasing customer use is generally considered rational economic behavior. RIITA believes that addressing the reality of traffic (except for NECA pool participants as noted below) makes more sense than obtaining certificates from companies.

Rate of Return for NECA Pool Participants. As the Commission notes in paragraph 21, of the NPRM, the tariff trigger language will not effectively address the issue of increasing access for a participant in the NECA traffic-sensitive pool. In fact, there is no need to change NECA traffic-sensitive pooling. Pooling participants earn revenue based on pooled revenues and expenses and have no individual incentive to

increase access minutes for the sole purpose of increasing revenues. The NECA pooling process eliminates any need for specific triggers in the tariff like the language that the Commission proposes for non-pool participants.

Preemption. In footnote 40, the Commission declines to take a position on intrastate traffic. Though the Commission may not have jurisdiction over intrastate traffic, it should clarify its rulings with respect to all other traffic and preempt the states to the extent possible because with each state handling the access issue separately, substantial confusion and costs have arisen. The large carriers are engaging in nation-wide forum-shopping to find the most burdensome methods of challenging companies that offer chat lines, conference bridges and other services. The Commission would greatly enhance the incentive for companies to offer new and valuable services by clarifying the legitimate nature of these services.

Other Issues. The Commission raises other issues for comment. RIITA reserves the right to comment on these issues in reply, after reviewing other industry comments.

Conclusion. RIITA's first concern is that issues related to a small number of companies not lead to unnecessary changes in the existing access regime. Particularly for NECA traffic-sensitive pool participants, the pooling process provides a built-in resolution of the issues raised in this docket. The present pooling system is adequate for

this docket without revisions. RIITA's second concern is that any tariff requirements for non-participants take into consideration what is happening, rather than alleged misconduct. If a trigger-mechanism is adopted, it should be based on measurable use, not percentage changes. Finally, RIITA asks the Commission to clarify these issues and to preempt the states where possible in order to assist in developing a more unified regulatory scheme.

Respectfully Submitted,

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