

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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act of	)	
1996	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	
	)	CC Docket No. 99-68
Intercarrier Compensation for ISP-Bound	)	
Traffic	)	WC Docket No. 04-36
	)	
IP-Enabled Services	)	CC Docket No. 99-200
	)	
Numbering Resource Optimization	)	

**REPLY COMMENTS OF THE  
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

The Rural Independent Competitive Alliance (“RICA”) files its Reply Comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) in the captioned proceedings, released November 5, 2008, FCC 08-262.

## I INTRODUCTION

At a time of global financial crisis unprecedented in the lifetimes of most living Americans, there is general consensus in industry, academia and government that there is a crucial need for expanded investment in telecommunications facilities that would make Broadband Internet Access ubiquitously available. Yet, the Commission appears stuck in gridlock over how to resolve issues that had become relatively clear at the beginning of the millennium. In this latest of multiple rounds of comments on the issues of access charge and universal service reform, the Commission has put forward proposals that, at their core and in conjunction with other policies, would reverse the commitment to a competitive industry envisioned by the 1996 Act. Together with its many merger approvals and its policies favoring spectrum licensing over large areas, adoption of these proposals would inevitably lead to return to a highly concentrated industry dominated by Ma Bell and her sister Verizon.<sup>1</sup> The unfortunate result for rural areas will be a return to the more than a century old environment where large carriers, wireline and wireless, make only minimal investments in rural areas and the digital gap will remain wide open.

Although it is widely understood that high cost rural areas represent the greatest challenges to financially feasible provision of broadband service, the proposals before the Commission fail to reflect the lessons learned long ago in the successful policies that lead to near ubiquitous availability of plain old telephone service. The Commission once understood that where the per subscriber costs of providing service are too high, sufficient revenues cannot be earned solely through end user revenues at affordable rates comparable to urban

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<sup>1</sup> Comments of the California PUC at 14: “the plan favors the large carriers, yet could have substantial negative financial consequences for small rural carriers and their subscribers...”

rates. The Commission's "Ozark Plan" and its successor, the access charge and Universal Service Fund rules, successfully addressed this problem in conjunction with the Department of Agriculture administered loan programs that made capital available and affordable to companies serving rural areas.<sup>2</sup> The REA (now RUDP) program worked synergistically with the intra-industry settlements system based on costs defined by a federal-state separations manual that evolved into today's access charges and the Universal Service Fund.

The combination of these programs recognized the national benefit of universal connectivity to the public switched network because each additional connection made the network more valuable to the existing members.<sup>3</sup> It therefore made sense that all members of the network should pay rates that recognize the need to expand to the maximum possible number of connections. It should take no great imagination to draw meaningful parallels between the days when farmers and ranchers were without telephone service to today when the US lags far behind a large portion of the developed world in the availability of broadband access to its citizens.<sup>4</sup> Unfortunately, especially with regard to the rural CLECs that have usually been the first, and often still the only, carriers to make broadband available to rural areas served by large carriers, the Commission has before it a series of proposals that would not only prevent rural CLECs from expanding the availability of modern and advanced

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<sup>2</sup> Congress established a loan program after finding that telephone service was unavailable in large portions of rural American. *See*, 7 U.S.C. 901 et seq.; 7 C.F.R. Part 1735.

<sup>3</sup> "Metcalf's Law" posits that the value or power of a network increases in proportion to the square of the number of nodes.

<sup>4</sup> *See, e.g.*: Dissenting statement of Commissioner Michael J. Copps *Re: High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45. May 1, 2008

services in rural areas, but would simply put many of the rural CLECs out of business altogether.<sup>5</sup>

As RICA's initial comments, and many previous filings, explained, the business model of the typical Rural CLEC works where the telecommunications needs of the area have not been adequately met by the large incumbent carrier for many years. The nature of a network serving all customers in an area is such that it cannot be constructed solely as customers are acquired, but substantial joint and common cost must be incurred before the first customer is served. Under these circumstances where the CLEC constructs new facilities and provides the advanced services not otherwise available, the CLEC can acquire the substantial market share necessary for financial feasibility. The Commission has recognized this factual pattern in its *Mid-Rivers* and *South Slope* proceedings.<sup>6</sup>

Despite RICA's concerns with provisions of each of the three alternative proposals that would inevitably result in many rural subscribers being left without the superior communications services they now receive from competitive providers that would be forced

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<sup>5</sup> RICA, at 17, disputed the Proposal's assertion and the Phoenix Center's purported study underlying it, that carriers with high access charge have no incentive to invest in broadband facilities. NECA cites data from a survey of its TS pool members that demonstrate a very high level of broadband availability to customers of rural ILECs. NECA at 15, n.35, 25, n. 68. NASUCA at 26, n. 108, agrees: "It is widely known that rural carriers have done a better job of bringing broadband to their customers than have the non-rural carriers (at least in the rural portions of the non-rural carriers' territories). See <http://www.insight-rp.com/reports/rural.asp>."

<sup>6</sup> *Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2)*, Report and Order, 21 FCC Rcd 11506 (2006) para 12 (extraordinarily high subscribership level attained by Mid-Rivers "testifies to the superiority of its service offerings;" "Mid-Rivers facilities appear to be technically superior and it provides maintenance and repair operations that are much closer"). *Petition of South Slope Cooperative Telephone Company, Inc. For an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act Declaring that South Slope Cooperative Telephone Company, Inc. Shall Be Treated as an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon*, Notice of Proposed Rulemaking, 23 FCC Rcd 15046 (2008).

out of business, there remain kernels of general agreement on principles that could provide the basis for at least some initial decisions by the Commission. Many of these areas of growing consensus were described in the November 5, 2008 Joint Statement of Commissioners Copps, Adelstein, Tate and McDowell.<sup>7</sup>

## II INTERCARRIER COMPENSATION

- A. There is Substantial Agreement that Intrastate Access Rates should move to the Interstate level.

The Comments of RICA and most other parties reflect general agreement on at least this much. The disagreements among the parties are primarily over two questions: first, whether, once the rate levels are the same, the rate should be further reduced; second, whether the Commission has legal authority to compel such reductions either as a *per se* preemption of the states or under its authority to make rules implementing Sections 251 and 252.

Most state regulators filing comments, and some other parties, agree with the RICA position that the Act and Supreme Court precedents do not provide authority to preempt state regulation under the current circumstances, even where such preemption is part of a transition plan to convert access traffic to traffic subject to the reciprocal compensation rules.<sup>8</sup> Some parties agreed with RICA that the structure and function of the Section 251/252 process indicates that Congress intended state arbitration of interconnection agreements under FCC general rules to be a mechanism for the introduction of competition between two or more carriers operating in the same general area, each of which has a retail relationship with an end

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<sup>7</sup> Joint Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell, Nov. 5, 2008 (“Four Commissioners’ Statement”)

<sup>8</sup> NARUC at 6-11; Massachusetts Department of Telecommunications and Cable at 8-9; Washington Utilities and Transportation Commission at 4-5.

user with respect to the traffic.<sup>9</sup> The provision of the originating or terminating access service on a wholesale basis to a retail carrier is a very different arrangement to which the application of the 251/252 process was not intended and does not fit.<sup>10</sup>

There are nevertheless ways to bring the rates together that can be implemented in the short run without the risk of protracted litigation and the accompanying uncertainty. In the first place, as RICA has advocated for several years, the Commission could advise Congress of the widespread agreement on the need for a single rate and seek a narrow legislative solution bringing all access under the Commission's jurisdiction. In lieu of legislation, and/or while it is pending, the suggestion of NECA and others that the Commission create incentives to the states to require reduction in access rates to the interstate level deserves serious consideration.<sup>11</sup>

B. There Are Few Overt Advocates for "Unduly Burdening Consumers."

The second and third points of consensus in the Four Commissioner's Statement are that consumers should not be unduly burdened with "increases in their rates untethered to reductions in access charges," and that an alternative cost recovery mechanism should be implemented. The proposals to significantly reduce access rates before the Commission have mechanisms designed to preclude the rates of at least some rural ILECs from becoming overly burdensome to subscribers. Rural CLECs are explicitly excluded from such mechanisms with the cavalier suggestion that because CLEC local rates are not limited by regulation, the CLEC is free to recover all costs through local rate increases. The proposals make no attempt to

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<sup>9</sup> Embarq at 30: "The absence of the term "local" in section 251(b)(5) does not entitle the Commission to ignore the fundamental elements of that section. And it does not entitle the Commission to usurp the states' authority over intrastate traffic."; NARUC at 6-11.

<sup>10</sup> See, Broadview Networks Inc. Cavalier Telephone, NuVox and XO Communications LLC at 28: "There is nothing reciprocal about the access charge regime."

<sup>11</sup> NECA 5-6.

explain why a mechanism must be created to protect consumers of a rural ILEC from excessive rate increases, but subscribers of a nearby rural CLEC facing similar, if not greater, increases deserve no protection. The answer apparently intended is written between the lines: rural CLECs should just go away and let the large carriers continue their practice of limited service in rural areas.

RICA has repeatedly emphasized that because its members generally operate in rural, high cost areas, if all of the recovery of their costs of service is shifted to end user consumers, their rates would not be just, reasonable, affordable and comparable to urban rates. In the high cost areas where many RICA members operate, shifting essentially all cost recovery to end users would result in rates that are so far above those of the competing ILEC that many subscribers will conclude that they must abandon the superior service quality and broadband capability of the rural CLEC and return to the ILEC, with its outdated, but fully depreciated facilities. At some point a CLEC's market share declines to the point it cannot continue offering service. To avoid this unfortunate result for rural consumers, the Commission must include rural CLECs in its alternative cost recovery mechanism, utilizing appropriate controls, such as benchmark rates, to ensure fairness and equity.

### **III UNIVERSAL SERVICE FUND REFORMS**

- A. There is substantial support for elimination of the "identical support" rule and replacement with a requirement to demonstrate individual costs.

The fourth point of growing consensus in the Four Commissioners Statement is elimination of the identical support rule and moving toward a system based on a company's own costs. RICA has long supported such a change, but many wireless and other parties have opposed this, alleging variously that such a requirement would be too burdensome, or

would not be competitively neutral. RICA has explained that while its members are prepared to perform cost studies pursuant to the rules applicable to small ILECs, and that system does not necessarily need to be applied to wireless carriers. The wireless industry has not come forward with any reasonable alternatives, but has chosen to spend its time criticizing the attempts to make reasonable accommodation as proposed by GVNW and Panhandle.

The Commission has recently issued a request for Eligible Telecommunications Carrier designation from a wireless carrier that proposes to submit a cost study as the basis for determining its support and has worked out the details of how such a study might be done.<sup>12</sup> This request demonstrates that where there is sufficient motivation, all ETCs can be put on a cost basis of USF support determination.

The proposals to exclude rural CLECs from receipt of USF support, either explicitly, or through creation of auction requirements, effectively stack the deck in favor of large carriers.<sup>13</sup> It is noteworthy that the wireless interests favor reforming USF support for CETCs by eliminating the tiny fraction that is paid to rural CLECs and then creating a new “mobility fund” which would replace the current support with support available only to wireless carriers.<sup>14</sup> RICA does not oppose USF support for mobile service providers that demonstrate their costs, but remains of the view that the identical support rule is responsible for virtually all of the excessive support paid to carriers not required to demonstrate need. If any of these proposals were adopted, the elimination of the identical support rule would be largely irrelevant in rural areas. RICA explained in its comments why such proposals are both bad

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<sup>12</sup> Public Notice, *Comment Sought on the Petition of Worldcall Interconnect, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New York*, CC Doc. No. 96-45, DA 08-2638, Dec. 4, 2008.

<sup>13</sup> Verizon, at 29-30, however complains, apparently without blushing, that having agreed to phase out USF support in order to obtain Commission blessing of its merger with Alltel, that network neutrality requires all that all other CETCs also abandon their own support, even though the others obtained none of the benefits which Verizon must be taken to believe it obtained through the merger approval.

<sup>14</sup> AT&T at 42; CTIA at 9.

public policy and in violation of the Communications Act. Comptel agreed that support should not be eliminated for CLECs.<sup>15</sup>

- B. The Commission must find ways to facilitate broadband deployment that are effective, efficient and lawful.

The fifth point of growing consensus relates to the importance of broadband to universal service. There is probably more agreement on this point than any other before the Commission. RICA has long supported measures to improve the ability of rural telephone companies to deploy broadband capability and its members have succeeded in making broadband available to many rural areas where it would not otherwise exist. There is, however, a wide divergence of opinion as to how or whether the Commission's Universal Service authority should be used to achieve this critical goal.

RICA has explained that given the limitations in the existing statute<sup>16</sup> that the best action by the Commission in the short run is to ensure that rural carriers, CLECs and ILECs alike are eligible for "sufficient" support for the current supported services because those carriers have demonstrated the intent and capability to extend broadband capability to the greatest extent feasible. Given the high level of interest in broadband from the public and Congress, it appears likely that there will be new legislation authorizing various forms of government support for broadband. In the meantime, broadband service penetration may expand sufficiently that the Commission can justifiably determine that it has been subscribed

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<sup>15</sup> Comptel at 31-33.

<sup>16</sup> Sections 214 and 254 in combination provide that carriers must be designated as Eligible Telecommunications Carriers and must provide the supported telecommunications services as a condition of receipt of universal service support. Supported services are designated by the Commission, but the Commission must first find that a proposed supported service is subscribed to by a "substantial majority of residential subscribers." Broadband currently does not meet that test. Florida PSC Comments at 9. Appendix C inconsistently proposed that rather than make broadband a supported service, a non-statutory condition that carriers must also provide broadband Internet access would be imposed on all ETCs. In addition to RICA, other parties questioned the consistency of this proposal with the statute. NECA at 15, n.40.

to by a substantial majority of residential subscribers and designate broadband telecommunications service (but not information service) as a supported service.

#### **IV CONCLUSION**

Despite the obvious disruption resulting from the many changes in the multiple government agencies concerned with telecommunications policies, the Commission must ensure that it does not now restart the process of reform of Intercarrier Compensation and Universal Service Support from ground zero. The Statement of the Four Commissioners recognizes that progress has been made, however painfully. The statement can serve as a starting point for some immediate reforms that are possible in 2009, even if all the big questions cannot yet be answered. As it proceeds, RICA urges the Commission to recognize the public benefits provided by a financially sound rural CLEC industry, and that it craft its policies so that the industry's health is maintained.

Respectfully submitted

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