Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Further Inquiry Into Certain Issues in the	)	WC Docket Nos. 10-90, 07-135, 05-337,
Universal Service-Intercarrier	)	03-109
Compensation Transformation Proceeding	)	CC Docket Nos. 01-92, 96-45
	)	GN Docket No. 09-51

RESPONSE TO FURTHER INQUIRY

of the

KANSAS RURAL INDEPENDENT TELEPHONE COMPANIES;
STATE INDEPENDENT TELEPHONE ASSOCIATION; and
RURAL TELECOMMUNICATIONS MANAGEMENT COUNCIL

The above organizations of independent Kansas providers of basic and advanced telecommunications services hereby submit their response.

I INTRODUCTION

The Kansas Rural Independent Telephone Companies (KRITC), incumbent wireline providers of basic and advanced communications services, submit the following comments in response to the Commission's Notice of Further Inquiry. Recognizing the current consideration of multiple plans for revision of existing telecommunications policy, these carriers offer observations and recommendations regarding certain elements of plans proposed. The KRITC carriers urge the Commission to consider certain principles required in a lawful and effective reform, and to be mindful of the effects of certain proposed policy revisions that could act at cross purposes with the salutary goals of proposed reforms.

Smaller independent local exchange carriers (LECs) are heterogeneous entities, less susceptible to broad assumptions and uniform treatment. Each broad reform proposal contains

elements that would affect individual small carriers differently. It is likely no single set of proposals would be most suitable for al such carriers. As a result, these Comments are not offered as support for a specific plan; rather, they are proposed to aid consideration of specific plan components.

II CONTINUATION OF RATE OF RETURN REGULATION

Continuation of a rural-non rural carrier distinction is warranted and appropriate. The controlling characteristic of rural carriers is the limited population available to take the carrier's service. This characteristic precludes a rural carrier from effective utilization of economies of scale and results typically in a much higher cost per customer. Maintenance of affordable rates comparable to those in urban areas and enhancement of service offerings to a limited customer base generally require reliance on external support mechanisms, as customer revenue alone will not sustain comparable services and rates. Ubiquitous affordable and comparable service in these services is as difficult, and likely more important to customers, as was true when Congress established the rural carrier classification.

Retention of rate of return regulation for rural incumbent carriers is a critical component of assuring expanded access to broadband service. Many rural providers, including all of the KR ITC carriers, have made significant investments to deploy broadband-capable facilities to much or all of their service areas. In most cases these investments have been possible only through assumption of long-term obligations. These obligations, in turn, have been possible only through reliance of both the lender and the borrower on continued specific and predictable universal service support.

Forcing carriers operating under long-term debt obligations into a substantially altered support environment would jeopardize many carriers' continuing ability to offer both advanced

and basic communications services. The uncertainty of access to support and the uncertainty of support sufficiency under alternative methodologies would put many carriers at risk of default on their substantial obligations to cooperative lending institutions and to the government. Default would, in turn, constrict the availability of capital resources available to other borrowers and inhibit new investment in broadband-capable facilities for underserved areas.

The Commission's August 3, 2011 Notice of Further Inquiry (at p. 3) refers to a proposal for continuation of existing rate of return regulation, "albeit with greater accountability and cost controls." Kansas rural LECs have traditionally recognized and supported the importance of public accountability in the use of ratepayers' support revenues, and both state and federal support audits are a regular part of these carriers' operations. It is unlikely that much "greater accountability" could be implemented, but these carriers support practices effective to satisfy the public's interest in appropriate use of all support revenues.

The Commission's reference to "greater accountability and cost controls" should be understood to mean requirements within reasonable and effective bounds. It would be unreasonable, for example, to impose on carriers and ratepayers new regulatory burdens that would carry regulatory costs exceeding the amounts of the sums subject to review. Further, the term "cost controls" should not be employed as a euphemism for arbitrary limitations on support necessary to meet legitimate cost and investment requirements. The public interest is best served by assuring reliable support that is neither inadequate nor excessive, measured against the actual service requirements that warrant the support.

Rate of return regulation for rural providers has established a proven record of transparency, accountability and efficacy in the provision of both basic and advanced communications services. It has been a superior method of incenting local investment while

preserving service affordability. No satisfactory case has been made for discarding this record of success in favor of alternate methodologies that have proved to be inferior in protecting the public interest, or that remain untested with potential for misuse.

III RATES

The paramount issue regarding a reasonable rate of return for rural providers is not the procedure by which such rate is adopted. A lawful rate of return is a rate sufficient to attract capital in comparison to comparable investments. More importantly, a lawful rate of return is one that can reasonably be achieved through prudent management and operation.

For some time the current authorized 11.25% rate of return on interstate investment has been a fiction. The imposition of an arbitrary cap on high cost support unrelated to embedded cost has made it effectively impossible for most rural carriers to achieve the authorized rate.

Specification of a lawful authorized rate of return in the instant proceeding must include not only an objectively sufficient rate, but also a predictable and reliable means by which a carrier subject thereto may achieve that rate through prudent operation. Uncertainty of cost recovery in high-cost areas will inhibit availability of capital and a level of investment necessary to insure continued access to comparable communications services. As utilization of broadband applications increases in importance, and as demands for broadband capacity grow, carriers under rate of return regulation will experience upward pressure on costs. An outright cap on support revenue, whether categorized or general, will result in an inability of rural carriers to meet customer needs.

IV LAWFUL CONSIDERATION OF SUPPORTED CARRIER REVENUES

The alternative support methodology proposed by the state members of the federal-state joint board has many positive elements. Overall, that plan would be more effective than the

provisions of the Commission's NPRM in preserving and expanding broadband availability nationwide. One element of the State Members' proposal, however, is contrary to law and to the public interest. The suggestion that support should be based on the earnings of a carrier's "total company," including affiliated entities, impermissibly would require a carrier to pay for its own right to recovery of costs and authorized earnings.

Effectively imposing the additional cost of self-contribution, while by definition precluding compensation for this increased burden, fundamentally contradicts the principles of rate of return regulation. It would in effect render impossible the achievement of any specific rate of return nominally adopted.

One question posed at p. 8 of the Notice of Further Inquiry directly illustrates how a "total company" approach to support determination is inherently unreasonable. The suggestion of an arbitrary exclusion of one class of affiliated activity (video) plainly shows confiscatory intent, as a carrier would be penalized (through reduced support) for profitable activities unrelated to universal service, while unprofitable and unrelated activities would be excluded from support computations.

Universal service calculation has regularly excluded both the costs and the revenues of unregulated activities by an eligible telecommunications carrier. By doing so, regulation has assured that support is neither more nor less than the amount required to advance the specific services eligible for support.

A "total company" basis for support of specific services would be highly impractical. Such a methodology would impose a profit disincentive on the unrelated activities of a carrier, as any increased profit would be negated by reductions in support. Absent wholesale cost regulation

of regulated and unregulated activities alike, it would be impossible to determine whether the unregulated activities' costs offsetting support revenue were in fact reasonable.

If the availability of unrelated capital resources such as current affiliate earnings were an appropriate limitation on a carrier's support, the concept could be applied equally to any past earnings of a carrier. "Total company" support calculation would indirectly and impermissibly impose regulation on private investment in unregulated enterprises, impeding or discouraging such investment.

A "total company" support standard would constitute a retroactive taking of private property. A carrier's prior return on investment in regulated activity would be effectively reduced in value after the fact, denying adequacy of return, if earnings from any reinvestment of that return subjected a carrier to a reduction of future support.

V. THE AVAILABILITY OF RELIEF THROUGH TIMELY AND ADMINISTRATIVELY AFFORDABLE WAIVER

Smaller rural carriers are far from homogenous, operating under individual geographic and market circumstances that may magnify the company-specific adverse effects of any particular element of reform. A broad set of reforms reasonable in the aggregate may have components wholly unreasonable as applied to a particular small carrier.

Strict uniformity of policy tends to produce selective adverse consequences, potentially compromising a small carrier's ability to perform its public service functions. Any reasonable reform must therefore incorporate a method for suspension or modification of elements of broad policy that would unduly affect individual carriers.

Smaller carriers can be affected disproportionately, and more rapidly, by any change to existing regulation. To be effective, a procedure for remedy by waiver or suspension addressing

such effects must be available timely and within the limited resources of even the smallest rural LEC. Relief that comes after months of administrative delay might easily be too late to permit a small carrier's continuing operations. A proceeding that requires commitment of unreasonable carrier effort and expense in relation to the amounts at issueoffers no effective relief.

VI RESTRAINT IN RELIANCE ON INCREASED END USER COSTS

The Commission must be cautious of revisions to intercarrier compensation that rely in whole or in part on increased subscriber line charges to maintain carrier cost recovery. The consumer naturally perceives no difference, and functionally there is no difference, between an increased SLC and a basic rate increase.

Increased end user charges, however categorized, directly undermine the objective of affordability. Additionally, increased prices will tend to drive consumers away from local incumbent providers. If a rural LEC loses a customer due to increased total charges, the carrier loses the existing revenue derived from that customer. Meanwhile, there would be minimal cost avoidance to the carrier required to maintain its network for the benefit of its remaining customers. Any substantial increase in SLC levels could therefore increase rather than decrease requirements for all consumers' contributions to external support mechanisms, or render such mechanisms increasingly insufficient to meet public service obligations.

Identical considerations would apply to federal adoption of a local service rate benchmark. Any mandated increase in local service rates, whether for broadband or voice, as a condition of receipt of full support otherwise payable, would jeopardize subscribership and place at risk the subject carriers continuing receipt of rate revenues. The record of this proceeding does not support any finding as to the potential extent of such revenue lost or the resulting added demand that would be placed on support mechanisms.

The principal goal of universal service has been, and should continue to be, the assurance of available and affordable communications service. Affordability of local voice service has traditionally been the province of the states, and various jurisdictions have maintained determinations of affordability in the public interest either through regulation or legislation. A national voice affordability benchmark would disregard variations between areas in cost of living and available income.

Even overlooking justifiable concerns with the propriety of federal jurisdiction over local service, it is doubtful a national "one-size-fits-all" affordability standard could be reasonably applied across broadly diverse economic circumstances in specific areas. If a relationship should exist between affordable voice service and adequate support levels, the states have superior information and experience in the determination of appropriate levels of affordability.

VII. EARLY ADOPTION OF REDUCTION IN INTERCARRIER COMPENSATION

Kansas rural carriers have operated under statutorily mandated interstate-intrastate access rate parity since 1997. The Kansas Telecommunications Act (K.S.A. 66-2001 *et seq.*) requires biennial adjustment of intrastate access rates to match the then-existing interstate rates. Rural carrier revenue losses resulting from intrastate access rate reductions are compensated dollar for dollar from the Kansas Universal Service Fund (KUSF), to which all intrastate telecommunications providers contribute. Those contributions typically are passed through to end users of regulated intrastate telecommunications services through a per-line and/or percentage surcharge.

Under the Kansas intrastate support system, consumers already enjoy significantly reduced intrastate toll rates due to greatly decreased intrastate access rates. Cost recovery responsibility has shifted substantially from implicit support in access revenue to explicit KUSF support; detailed and ongoing cost oversight by the Kansas Corporation Commission assures that

rural LECs receive support only as needed to achieve state-approved revenue requirements.

If FCC action were to require national reduction of all intercarrier compensation to a uniform reduced level, the reductions in many other states would exceed those required in states like Kansas that have already required significant rate reduction. It would be unreasonable and discriminatory to require Kansans to make equal contribution to a uniform national mechanism intended to ameliorate resulting revenue losses.

If a transitional or incremental reduction of intercarrier compensation is imposed, it would be reasonable to exempt "early adopter" states like Kansas from rate reductions and compensatory contributions until other states' rates have reached the current interstate and Kansas levels. Not only would such an approach avoid discriminatory burdens on early adopter states, but it would also achieve earlier rate uniformity among states without aggravating disruption from accelerated reductions in states that have maintained higher intrastate rates.

VIII COMPOUNDING COMPETITIVE BIAS

More than one reform proposal under consideration has potential to impose a "double whammy" on rural local carriers, ultimately likely to aggravate demand on support mechanisms and contributing ratepayers. Substantial reductions in intercarrier compensation, particularly reductions not based on compensated carriers' costs, would afford VoIP and wireless providers significant cost savings and opportunities for pricing advantages. At the same time, requiring rural carriers to recover revenue losses through increased subscriber line charges or increased local rates would mandate increased prices imposed on the incumbent wireline carrier's customers. Operating in tandem, these two changes would institute a considerable and disruptive regulatory bias against incumbent carriers.

Forcing the price of incumbents' services upward while decreeing reduced costs for competitive technologies will have a negative effect on incumbent subscribership without reducing incumbents' costs. The resulting negative revenue effects for incumbents will result either in greater support requirements or reduced capability to serve the public.

The most effective step available to restrain unnecessary demand on support mechanisms and to maintain competitive neutrality would be immediate imposition of uniform, technology-neutral support contribution and intercarrier compensation obligations at present rates, pending any subsequent reduction uniformly applicable. Rather than permitting VoIP carriers and non-contracting wireless carriers to continue benefiting from evasion of their responsibilities for local network costs, a uniform and effective requirement for traffic identification and compensation should be adopted forthwith. Existing high cost network facilities will continue to be a necessary channel for exchange of traffic with many consumers; the responsibility for recovery of those facilities' costs incurred under current regulatory policy cannot legitimately be made a competitive advantage or disadvantage as among the carriers who benefit from use of the facilities.

IX. CONCLUSION

The Commission, in pursuit of its laudable effort to expand broadband availability, has developed or received a variety of differing plans. Each emphasizes a differing approach to the overall objective, and each would impose differing degrees of modification on the operations of existing rural providers of basic and advanced services. Consideration of any plan, and comparison of plans, should place primary emphasis on respect for existing statutory and constitutional principles. A plan that produces new disparities in affordability or service levels,

or that takes private property without just compensation, is certain to divert resources from productive investment to litigation and costs of delay.

Additional priority in policy determination should be given to building on proven success in rural broadband deployment rather than risking economic waste by rendering such deployment unsustainable. Disruption of existing broadband provision would risk the creation of new unserved areas, placing fragile rural communities and economies in jeopardy.

There is no valid policy reason, and no advantage to the public interest, in creation of regulatory conflict between well-served and underserved areas. Kansas rural carriers support the ubiquitous availability of broadband service comparable to that available in well-served urban areas; this support is evidenced by these carriers' investment in bringing broadband access to their customers. Policy incentives for areas that lack similar carrier commitment should supplement, rather than reverse, existing accomplishments.

Respectfully submitted,

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