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

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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	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

RECEIVED

NOTICE OF PROPOSED RULEMAKING

Adopted: December 21, 2000 **Released: January 5, 2001**

Comment Date: 30 days from publication in the Federal Register
Reply Comment Date: 45 days from publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on a Petition for Rulemaking submitted by the Multi-Association Group (MAG).[1] The Petition sets forth an interstate access reform and universal service support proposal for incumbent local exchange carriers (LECs) subject to rate-of-return regulation (rate-of-return or non-price cap carriers).[2] It is designed to be implemented over a five-year period beginning on July 1, 2001.

2. Pursuant to the mandate of the Telecommunications Act of 1996, the Commission has taken various measures to promote competition in the telecommunications market and reduce long distance

[1] Petition for Rulemaking of the LEC Multi-Association Group, RM No. 10011, filed October 20, 2000 (MAG Petition). The MAG is comprised of the National Rural Telecom Association (NRTA), National Telephone Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and United States Telecom Association (USTA).

[2] There are approximately 1300 non-price cap carriers serving less than eight percent of access lines nationwide. They are typically small, rural carriers, but vary significantly in study area size and customer base. *See Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Notice of Proposed Rulemaking, 13 FCC Rcd 14238 (1998) (*Access Charge Reform Notice*).

rates.[3] With regard to price cap carriers, this process began in 1997 and continued with the recent *CALLS Order*.[4] Among other things, we aligned the access rate structure more closely with the manner in which common line or loop costs are incurred, and replaced implicit subsidies with explicit universal service support that is portable to competitors. In 1998, we commenced a separate proceeding to reform the interstate access rate structure for non-price cap carriers.[5] While recognizing differences between the two groups, we proposed to reform the rate structure for non-price cap carriers in a manner similar to that adopted for price cap carriers.[6] We also expressed our intention to consider in the future alternative forms of incentive-based regulation that could encourage non-price cap carriers to be more efficient.[7]

3. The MAG offers its plan as a comprehensive solution to regulatory issues facing non-price cap carriers, and asks that the Commission adopt the plan without modification as an integrated package. The MAG plan is modeled in some respects on the CALLS plan adopted for price cap carriers.[8] The MAG plan would increase the recovery of common line costs through flat, non-traffic sensitive charges. For carriers that elect a transition to a new form of incentive-based regulation, it provides for reduced per-minute access rates, and a new, explicit interstate access universal service subsidy to make up for any shortfall in carriers' revenues. The MAG plan also proposes to eliminate the current funding caps on high-cost loop support for rural carriers.[9] The MAG believes its plan would have many benefits, including a more efficient access rate structure, more explicit universal service support, and new incentives for carriers to increase efficiency and invest in new technologies. We appreciate their efforts to develop a consensus among rate-of-return carriers and intend to move forward expeditiously with full consideration of the MAG plan.

4. The specifics of the MAG plan are set forth in the Petition, in particular Exhibits 1 (Detailed Description) and 3 (Proposed Rules). We incorporate the Petition and exhibits as Appendix A to this

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[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.*

[4] *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (*CALLS Order*), *pets. for review pending, Texas Office of Public Util. Counsel et al. v. FCC*, 5th Cir. Nos. 00-60434 (and consolidated cases) (2000); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982 (1997).

[5] *Access Charge Reform Notice*, 13 FCC Rcd at 14238.

[6] *Id.* at 14240. For example, we recognized that non-price cap carriers often have higher costs, receive a higher proportion of their total revenues from interstate access revenues and universal service support, and receive much of their revenue from a small number of multi-line businesses in their service territories. *Id.* at 14244.

[7] *Id.* at 14240.

[8] *See CALLS Order*, 15 FCC Rcd at 12962.

[9] 47 C.F.R. §§ 36.601(c), 36.621; *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20439, n. 20 and accompanying text (1999) (*Ninth Report and Order*). In this and other respects, the MAG plan overlaps with the Rural Task Force recommendation to the Federal-State Joint Board on Universal Service. *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00-J-4 (released December 22, 2000); *Letter of William R. Gillis, Chair, Rural Task Force to Magalie Roman Salas, Secretary, Federal Communications Commission*, CC Docket No. 96-45 (September 29, 2000).

Notice. Below, we summarize the salient features of the plan and invite comment on whether we should adopt all or any specific aspects of the plan. We encourage input particularly from the Federal-State Joint Board on Universal Service (Joint Board) on the universal service aspects of the MAG plan.

II. BACKGROUND

5. Under the current rules, non-price cap carriers may file access tariffs based on their own costs or participate in pooled National Exchange Carrier Association (NECA) common line and/or traffic sensitive tariffs.[10] Almost all non-price cap carriers participate in the NECA common line tariff. Pooling carriers charge rates set by NECA, pool their revenues, and recover their costs from the pools, including a return on investment. Some non-price cap carriers receive compensation based on average schedules rather than their own costs.[11]

6. The MAG plan proposes two regulatory regimes, "Path A" and "Path B," which have certain common features, as well as pooling and non-pooling options. Carriers that choose Path A at the outset would have five years to convert from rate-of-return to a new form of incentive-based regulation. Rate Averaging Support (RAS), a new interstate access support mechanism, would be available only to Path A pooling carriers. Path B carriers would remain under rate-of-return regulation, with the option to elect Path A at any time during the five-year transition period, after which a waiver of the Commission's rules would be required to convert to incentive-based regulation. Path A carriers cannot return to Path B.

A. Common Features of Path A and Path B

7. The MAG plan has a number of features that would apply to all non-price cap carriers, regardless of whether they elect Path A or Path B. Subscriber line charge (SLC) caps for all non-price cap carriers would be raised to the SLC caps applicable to price cap carriers, provided they are comparable to the SLCs actually charged by price cap carriers.[12] The rate of return would be fixed at the current 11.25 percent,[13] and jurisdictional separations factors would be frozen in accordance with the recommendations of the Federal-State Joint Board on Jurisdictional Separations.[14] In addition, the two existing NECA pools would be collapsed into one.[15] Existing switched access rate elements would be

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[10] *See generally Access Charge Reform Notice*, 13 FCC Rcd at 14244.

[11] *See id.*

[12] SLCs are flat, non-traffic sensitive charges assessed on end-users to recover LECs' interstate-allocated common line costs. Under the *CALLS Order*, residential and single-line business SLC caps for price cap carriers rise to $5.00 as of July 1, 2001, and, if justified by a cost study, to $6.50 by July 1, 2003. Multi-line business SLC caps for price cap carriers remain at $9.20. *See CALLS Order*, 15 FCC Rcd at paras. 64-75. Under the MAG plan, multi-line business SLC caps gradually would rise to $9.20 by July 1, 2003. There would be no separate SLC caps for non-primary residential lines. The MAG plan also provides for SLC deaveraging into up to three geographic zones per wire center, provided no multi-line business SLC rate is set lower than the lowest residential SLC rate. *See CALLS Order*, 15 FCC Rcd at paras. 113-28.

[13] *See Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking, 13 FCC Rcd 20561 (1998).

[14] *See Comment Sought on Recommended Decision Issued by Federal-State Joint Board on Jurisdictional Separations*, CC Docket No. 80-286, Public Notice, DA 00-2433 (released October 30, 2000).

[15] The MAG plan provides that NECA may file different tariffs for Path A and Path B carriers, and "band" rates to accommodate varying carrier costs within the pool.

retained, however, and carriers may elect to participate in the NECA common line and/or traffic sensitive tariffs on a study-area basis. A NECA special access tariff also would be available.

B. Path A

8. *Rate Structure/RAS.* Pooling carriers that elect Path A would have two major switched access rate components—the Composite Access Rate (CAR) and the SLC—and a new universal service subsidy, RAS, in addition to the existing interstate access subsidy, Long Term Support (LTS).[16] The CAR would be a weighted aggregate target for existing per-minute switched access rate elements (including CCL, local switching, transport, and residual interconnection charges). It gradually would be reduced to 1.6 cents per-minute by July 1, 2003.[17] RAS would be a residual support mechanism to recover the shortfall between allowed revenues of Path A pooling carriers and the sum of their revenues derived from switched access rate elements (including SLCs) and the existing interstate access subsidy.[18] RAS also would be available to support special access rates for carriers under incentive-based regulation. RAS would be available only to Path A pooling carriers.

9. *Incentive-Based Regulation.* At any time during the transition period, pooling carriers may convert on a study-area basis from rate-of-return to incentive regulation, under which a carrier would be compensated based on "revenue per line" (RPL) rather than accounting costs. Initially, RPL would be calculated by dividing a study area's total switched access, inflation-adjusted revenue requirement or pool settlement amount (based on the prior year average or the most recent data available) by its number of lines, and adjusted for the pool's actual revenue. Thereafter, RPL would be adjusted annually for inflation (GDP Price Index);[19] study areas under incentive-based regulation would not be required to report cost data. When a study area converts to incentive-based regulation, the MAG plan provides that its per-line universal service support (high-cost loop support, LTS and Local Switching support, but not RAS) also would be adjusted annually for inflation. In addition, a low-end adjustment would be available to prevent annual returns from falling below 10.75 percent (for carriers with five or fewer study

[16] LTS supports the interstate-allocated common line costs of high-cost rate-of-return carriers. LTS is available only to pooling carriers. LTS was removed from the access charge system in 1997, and is now collected from all providers of interstate telecommunications services on an equitable and non-discriminatory basis. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Report and Order, 13 FCC Rcd 5318, 5352-54 (1997) (*Fourth Order on Reconsideration*). In addition to LTS, two federal universal service mechanisms provide support for intrastate-allocated costs of high-cost rate-of-return carriers: high-cost loop support under Part 36 of the Commission's rules, which provides support for a variable percentage of rural carriers' loop costs, and Local Switching Support (formerly DEM Weighting), which supports the switching costs of carriers with 50,000 or fewer loops. *See* 47 C.F.R. §§ 36.601, *et seq.*

[17] According to the MAG, the current aggregate per-minute rate is 3.9 cents, and the overall reduction would be proportional to that provided for in the *CALLS Order*. *See CALLS Order*, 15 FCC Rcd at paras. 70-75.

[18] LTS is not a residual support mechanism. Instead, it is based on prior-year support levels adjusted by a prescribed rate of change. *See Fourth Order on Reconsideration*, 13 FCC Rcd at 5348-50, 55-57.

[19] At a carrier's option, RPL could be adjusted to reflect updated cost study or revenue requirement data. RPL also would be subject to adjustment for regulatory changes, as well as for mergers and acquisitions. Pooling carriers would receive RPL for acquired lines based on the average RPL of all pooling study areas for the first 18 months, during which time a cost study must be conducted. If the lines are then incorporated into an existing study area, RPL would be the weighted average RPL of the study area and the acquired lines. *See infra*, para. 12.

areas) or 10.25 percent (for carriers with more than five study areas).[20] For non-pooling carriers, switched access rates would be set based on RPL, and initially may include universal service revenues lost by exiting the pool.[21] Path A non-pooling study areas would not be able to return to the pool.

10. *Post-Transition Period*. The MAG plan provides that Path A carriers must convert to incentive-based regulation by the end of the five-year transition period. RPL no longer would be tied to actual pool revenues: instead, RAS would be used to reconcile or "true up" available pool revenues and pooling carriers' settlement claims (based on actual line counts updated on a monthly basis). The low-end adjustment would continue to be available.

C. Other Features

11. *Universal Service Support*. The MAG plan would eliminate the "interim cap" on high-cost loop support and the corporate operations expense limitation.[22] Universal service support would be portable and, at the carrier's option, may be disaggregated into as many as three geographic zones per wire center, provided that the disaggregation does not change the overall support level for the study area. Lifeline support would be expanded to cover increased SLCs, in accordance with the *CALLS Order*.[23]

12. *Mergers and Acquisitions*. The MAG plan would eliminate the rule freezing study area boundaries for non-price cap carriers. Instead, non-price cap carriers would only need to notify the Commission and the affected state regulatory commission before incorporating acquired telephone exchanges or lines into existing study areas.[24] The MAG plan also would eliminate the all-or-nothing rule: carriers may retain non-price cap status when they become affiliated with price cap carriers, or acquire lines, exchanges, or study areas from price cap carriers.[25] In addition, the MAG plan would eliminate section 54.305 of the Commission's rules, which limits universal service support for acquired telephone exchanges to the support received by the seller.[26]

13. *Geographic Rate Averaging and Rate Integration*. The MAG plan includes provisions to

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[20] The low-end adjustment would be paid in monthly installments during the year after the carrier underearns, but could not increase earnings during the period received. The low-end adjustment also would be available to non-pooling study areas in the form of a prospective rate adjustment.

[21] The MAG plan provides that RAS will not apply in subsequent years for non-pooling Path A study areas. Special access rates for non-pooling Path A study areas would be set on a flexible market basis, with deaveraging, term and volume discounts, and contract pricing permitted.

[22] 47 C.F.R. §§ 36.601(c), 36.621; *see Ninth Report and Order,* 14 FCC Rcd at 20439, n. 20 and accompanying text; *see also supra*, n. 9.

[23] *See CALLS Order*, 15 FCC Rcd at paras. 214-217; 47 C.F.R. § 54.403.

[24] *See* 47 C.F.R. Part 36, Appendix (defining "study area"). Currently, a carrier must request a waiver of the freeze if the proposed sale of an exchange would have the effect of changing study area boundaries.

[25] *See* 47 C.F.R. § 61.41(c). This rule provides that when rate-of-return and price cap carriers merge or acquire one another, the former must convert to price cap regulation within one year. *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Order on Reconsideration, 6 FCC Rcd 2637, 2706 (1991). Under the rule, acquisition of part of another carrier's service area is treated as the acquisition of the carrier. *Id.*

[26] 47 C.F.R. § 54.305; *see* Letter of William F. Maher, Jr. to Magalie Roman Salas dated November 21, 2000 ("The plan is intended to propose the deletion of current section 54.305 . . . from the Commission's rules.").

promote rate and service comparability in urban and rural areas.[27] Interexchange carriers (IXCs) would be required to pass through to consumers any savings realized from lower access rates as a result of implementation of the MAG plan, and to offer consumers in rural and urban areas the same optional calling plans. In addition, IXCs would be prohibited from imposing minimum monthly charges on residential consumers.

14. *New Access Services*. The MAG plan provides that new interstate access services of non-price cap carriers would be introduced at prevailing market rates, and either may be administered by NECA on behalf of pooling carriers or introduced outside the pool by non-pooling carriers.[28]

III. ISSUES FOR COMMENT

15. As stated above, the MAG offers its plan as a comprehensive solution to regulatory issues facing non-price cap carriers, and asks that the Commission adopt the plan without modification as an integrated package. We seek comment on whether we should adopt the MAG plan in its entirety, as requested by the MAG members. We also seek comment on whether, in the event that we do not adopt the MAG plan in its entirety, there are specific aspects of the proposal that we should adopt or incorporate into any of our above-captioned proceedings. In addition, we seek comment on the impact, if any, of the MAG plan on other pending proceedings before the Commission.[29] We also seek comment on the process through which the Commission should evaluate the MAG plan. In particular, we ask how we may best address the concerns that may be raised by parties who were not members of the MAG.

16. We invite interested parties from all industry segments, including competitive LECs, IXCs, and wireless providers, as well as consumer groups and state commissions, to submit comments on the MAG plan. Parties should comment on the public policy implications of the MAG plan and/or particular aspects of the plan, including its potential effects on the competition and universal service goals of the 1996 Act, and whether and how it would promote consumer welfare. What would the net impact of the MAG proposal be on non-price cap carrier revenues? Parties also should address how small business entities, including small incumbent LECs and new entrants, will be affected by the MAG plan.[30] We briefly discuss below several of the major issues raised by the MAG plan that we encourage interested parties specifically to address in their comments.

17. *Access Rate Structure*. We seek comment on the access rate structure aspects of the MAG plan. Are the proposed reforms, which in some respects are modeled on the CALLS plan adopted for price cap carriers, appropriate for non-price cap carriers?[31] Are they likely to achieve the competitive and consumer benefits anticipated by the MAG members? Is continued maintenance of lower SLC caps for non-price cap carriers than for price cap carriers consistent with section 254 of the 1996 Act? Is a

[27] *See* 47 U.S.C. § 254(g).

[28] *See Access Charge Reform Notice*, 13 FCC Rcd at 14270 (proposing to streamline Part 69 waiver requirement for the establishment of new switched rate elements to accommodate a new service offering).

[29] *See, e.g., Comment Sought on Recommended Decision Issued by Federal-State Joint Board on Jurisdictional Separations*, CC Docket No. 80-286, Public Notice, DA 00-2433 (released October 30, 2000).

[30] *See* Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

[31] We note that the Commission has recognized significant differences between price cap and non-price cap carriers, although in 1998 it proposed to reform access charges for both in the same manner, subject to receiving evidence that such differences "require different rules to achieve the goal of fostering an efficient, competitive marketplace." *See Access Charge Reform Notice*, 13 FCC Rcd at 14240.

two-path scheme necessary to accommodate diversity among non-price cap carriers?[32] Would the potential regulatory complexity of this two-tiered approach have practical or administrative consequences? Would the MAG plan benefit all non-price cap carriers, regardless of size and/or operating conditions? Are larger carriers with relatively low costs more likely than small carriers to elect Path A? If so, would the result be inflation of Path B access rates? What are the characteristics of companies that are likely to elect Path B? Is it appropriate as a legal or policy matter to restrict RAS to Path A carriers? Would it be appropriate to close out our rate-of-return proceeding and keep the rate of return at its current level of 11.25 percent for Path B carriers?[33] We invite parties to comment on these and any other issues related to the MAG plan's proposed reform of the interstate access rate structure for non-price cap carriers.

18. *Universal Service Support*. Unlike the CALLS plan, the MAG plan does not estimate the amount of implicit support in access rates, or place a ceiling on the proposed new access subsidy, RAS.[34] Is it appropriate to cap interstate access support for price cap carriers but not for non-price cap carriers? To what extent is RAS likely to increase the size of the universal service fund, and how will RAS support levels change over time? What impact will such increases have on consumers? Is the increase likely to be offset by decreases in access rates and charges resulting from implementation of the MAG plan? Should RAS be available to support special access services, which have not been defined as supported services by the Commission? If the Commission creates RAS as a residual support mechanism, should LTS be retained as a separate interstate access subsidy? Should we adopt a provision similar to that included in the *CALLS Order* for recovery of universal service contributions through a separate rate element or line item?[35] We note that aspects of the MAG plan concerning intrastate high-cost loop support overlap with issues that are part of the Federal-State Joint Board on Universal Service's review of the Rural Task Force Recommendation.[36] In addition, we intend to work closely with the Joint Board on those aspects of the MAG proposal related to interstate access universal service support and we therefore seek the valuable input of the Joint Board on these issues.

19. *Incentive-Based Regulation*. Would the MAG incentive-based approach create appropriate economic incentives for operating efficiency and investment? Is it likely to encourage long term investment? Is it likely to encourage investment in high-speed infrastructure?[37] Is the proposed ability of carriers to fix or adjust RPL at any time likely to reinforce "lumpy" investment patterns (significant investment in a single year, rather than a steady flow of investment), and/or encourage cost inflation? How would consumers benefit from any of the efficiency gains that incentive-based regulation is expected to produce?

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[32] *See Access Charge Reform Notice*, 13 FCC Rcd at 14244 (recognizing that non-price cap carriers "are not . . . a homogenous group, and their operating conditions vary significantly.").

[33] *See supra*, n. 13.

[34] *See CALLS Order*, 15 FCC Rcd at paras. 198-205.

[35] *See CALLS Order*, 15 FCC Rcd at para. 218.

[36] *See supra*, n. 9. We anticipate addressing these intrastate issues in conjunction with an order implementing high-cost reform for rural carriers.

[37] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Second Report, FCC 00-290 (released August 21, 2000), at para. 267 (*Second Report*) (stating Commission's commitment to "consider developing an incentive-based approach for [non-price cap carriers] to use current revenues for investment in high-speed infrastructure.").

20. In addition, to what extent is the MAG incentive-based approach likely to increase non-price cap carrier revenues? Does an inflation factor equal to the GDP Price Index accurately reflect changes in costs per line experienced by the carriers that can be expected to select Path A? Should an X-factor or consumer productivity dividend be included in RPL?[38] Is a low-end adjustment necessary where carriers retain the option to remain under rate-of-return regulation, and at what level should it be set? How would the Commission evaluate the validity of low-end adjustment showings if carriers are no longer required to report cost data annually? What are the costs and benefits of permitting carriers to elect on a study area basis when to convert to incentive-based regulation and whether to continue pooling? Is the five-year transition period proposed by the MAG an appropriate transition period to incentive-based regulation? We invite commenters to address these issues and any others when discussing the incentive-based regulation proposals in the MAG plan.

21. *Advanced Services*. One goal of the MAG plan is to promote the deployment of advanced services to rural areas, a goal shared by the Commission.[39] We seek comment on the validity of the MAG's premise that universal service funding caps and regulatory uncertainty have diminished non-price cap carriers' incentives to invest in new technologies.[40] Does the MAG plan represent the best means of promoting the deployment of advanced services in rural areas, or are there alternative means that would better accomplish this goal? Does the MAG plan require the use of universal service funding to support advanced services or infrastructure capable of providing advanced services?[41]

22. *Mergers and Acquisitions*. Is elimination of the all-or-nothing rule, as proposed in the MAG plan, warranted? Cost shifting concerns prompted the Commission to adopt the rule in 1993; do these concerns remain valid today?[42] Likewise, is the proposed elimination of the freeze of study areas for non-price cap carriers warranted?[43] Does the MAG plan adequately address gaming concerns that would arise if section 54.305 of the Commission's rules were eliminated?[44] Are there alternative ways to

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[38] *See CALLS Order*, 15 FCC Rcd at paras. 135-49 (discussing X-factor function under original LEC price cap scheme and under CALLS plan).

[39] *See* 47 U.S.C. § 706; *Second Report*, FCC 00-290 at paras. 247, 267; *see also* Petition at ii, 12-13, 2-18.

[40] *See id.* at 2-18, 2-19. We anticipate addressing universal service funding cap issues in conjunction with an order implementing high-cost reform for rural carriers.

[41] We note that advanced and high-speed services are not currently included within the definition of services supported by the universal service mechanisms, but the Commission's forward-looking high-cost support mechanism for non-rural carriers provides support for infrastructure that does not impede high-speed services. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8822-23, 8913 (1997) (*First Report and Order*) (subsequent history omitted); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Report & Order, 13 FCC Rcd 21323, 21352-53 (1998). The Commission recently requested the Joint Board to review the definition of universal service. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 00-440 (released December 21, 2000).

[42] *See generally National Rural Telecom Association v. FCC*, 988 F.2d 174, 179 (1993).

[43] *See supra*, n. 24. The Commission froze study area boundaries effective November 15, 1984, primarily to ensure that carriers do not place high-cost exchanges in separate study areas to maximize universal service payments. The freeze also prevents transfers of telephone exchanges among existing study areas for the purpose of increasing interstate-allocated revenue requirements and compensation.

[44] 47 C.F.R. § 54.305; *see First Report and Order*, 12 FCC Rcd 8776, 8942-43 (1997) (rule adopted to prevent carriers receiving support based on the size of their study areas and embedded costs from "placing unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges").

address the underlying concerns raised by the MAG that limits on universal service support discourage non-price cap carriers in rural areas from acquiring and upgrading telephone exchanges?[45] We invite the Joint Board to comment on the universal service implications of these MAG proposals.

23. *Geographic Rate Averaging and Rate Integration*. We seek comment on the proposed pricing rules in the MAG plan that would be applicable to IXCs. Among other things, we invite parties to address whether all IXC minimum monthly charges should be prohibited, or whether IXCs should only be required to offer at least one calling plan without such charges. In addition, how would the Commission ensure that IXCs comply with the MAG's proposed requirements, given the fact that the Commission does not regulate the rates of IXCs?

IV. PROCEDURAL ISSUES

A. Ex Parte Presentations

24. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.[46]

B. Initial Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act (RFA),[47] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals in this Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice, set forth below in paragraph 39, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[48]

1. Need for, and Objectives of, the Proposed Rules

26. The Commission has initiated this proceeding to consider interstate access charge and universal service reforms for rate-of-return carriers proposed by the MAG as detailed in Appendix A to this Notice. The MAG plan would raise SLCs for all rate-of-return carriers to the price cap carriers' SLC caps and permit deaveraging of the SLCs. The plan would also extend the Lifeline program to cover the increased SLCs and eliminate the cap on high cost loop support and the corporate operations expense

[45] In this regard, we note that the Rural Task Force has recommended to the Joint Board retention of section 54.305 with a new "safety valve" mechanism permitting additional support for transferred exchanges if the acquiring rural carrier makes meaningful new investments. *See* Rural Task Force Recommendation at 47-48; *supra*, n. 9. We anticipate addressing section 54.305 issues in conjunction with an order implementing intrastate high-cost reform for rural carriers.

[46] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206.

[47] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[48] *See* 5 U.S.C. § 603(a).

limitation. In other respects, the plan would permit rate-of-return carriers to continue under the current access charge and universal service regulatory regimes, or elect the alternatives available in the MAG plan. The MAG plan would also require IXCs to pass through to customers savings realized from reduced access rates and to offer the same optional calling plans to rural and urban customers alike.

27. Rate-of-return carriers electing the alternative regulatory approach proposed by the MAG plan would commence a five-year transition plan for interstate access charges and universal service funding. The MAG plan would, for example: establish an "incentive" method for compensating NECA pool members electing the incentive approach based on inflation-adjusted, revenue per line amounts; reduce per minute access charges to $0.016; establish low-end earnings levels; consolidate the two NECA pools into one pool; provide for certain pricing flexibility if a non-price cap carrier elects to remove one or more study areas from the NECA pool; and make certain of the options, including participation in the NECA pool, available on a study-area basis. The plan also establishes procedures for introducing new services and for the treatment of mergers and acquisitions. The plan would also establish an additional, explicit universal service subsidy for non-price cap carriers electing the incentive approach of the MAG plan (known as rate averaging support), make universal service support payments portable, and permit carriers to deaverage the universal service support into three zones per wire center. Settlements with non-price cap carriers would be handled by NECA whether a carrier elected to convert to incentive-based regulation under Path A of the MAG plan or remain under rate-of-return regulation. A rate-of-return carrier could elect to tariff its offerings for one or more study areas itself, which would give it additional pricing flexibility, but would require it to forgo any rate averaging support.

2. Legal Basis

28. This rulemaking action is supported by sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended.[49]

3. Description and Estimate of the Number of Small Entities to Which the Notice will Apply

29. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[50] The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[51] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[52] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of

[49] 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403.

[50] 5 U.S.C. § 603(b)(3).

[51] 5 U.S.C. § 601(6).

[52] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

operation; and (3) meets any additional criteria established by the SBA.[53]

30. We have included small incumbent carriers in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[54] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[55] We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

31. *Local Exchange Carriers*. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[56] According to the most recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.[57] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of this number, 13 entities are price cap carriers that would not be subject to the rules, if adopted. Consequently, we estimate that fewer than 1,335 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected by the proposed rules.

32. *Competitive Local Exchange Carriers*. Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[58] The most reliable source of information regarding the number of competitive LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider

[53] 15 U.S.C. § 632.

[54] 5 U.S.C. § 601(3).

[55] *See* letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[56] *Id.*

[57] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000)

[58] Standard Industrial Classification (SIC) Code 4813.

services or competitive LEC services.[59] The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

33. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[60] According to the most recent *Carrier Locator* data, 738 carriers reported that their primary telecommunications service activity was the provision of interexchange services.[61] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 738 small entity IXCs that may be affected by the proposed rules.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. The MAG plan is a proposal submitted by four associations representing rate-of-return carriers. Under the MAG proposal, *all* rate-of-return LECs would be required to modify their access tariffs to comply with the new SLC caps, which may be deaveraged. Rate-of-return LECs selecting Path A must adjust their traffic sensitive rates (carrier common line, local switching, transport, and transport interconnection charge) to comply with the composite access rate or CAR target. Rate-of-return carriers electing incentive-based regulation for one or more study areas must establish revenue per line or RPL compensation amounts that will be inflation-adjusted annually, after which they will not be required to file cost data with NECA. The MAG proposes that Path A carriers with study areas participating in the pool's switched traffic sensitive tariff, but not in the special access tariff, must provide the special access rates of those study areas to NECA by March 1 prior to the annual filing to support NECA's calculation of pool transport rates. The MAG plan also proposes that rate-of-return carriers choosing to deaverage their universal service support file the effective per-line support amount for each universal service zone and a geographic description and map of each such zone with the Commission, the relevant state regulatory agency, and USAC. Rate-of-return carriers would be required to notify the Commission and the affected state regulatory commission before incorporating acquired telephone exchanges or lines into existing study areas, rather than having to file a waiver to do so, as is currently required. The MAG plan proposes that Path A carriers under incentive-based regulation and participating in the NECA pool be required to perform a twelve-month cost study of the acquired lines within eighteen months of the acquisition. Finally, the plan would permit a Path A carrier subject to incentive-based regulation (whether in or out of the NECA pool) to file a cost study with NECA seeking a low-end adjustment if its earnings fall below 10.75 percent (if five or fewer study areas are served) or 10.25 percent (if more than five study areas are served). It is not clear whether, on balance, the proposals will increase or decrease

[59] FCC, Common Carrier Bureau, *Carrier Locator: Interstate Service Providers*, Figure 1 (number of carriers paying into the TRS Fund by type of carrier) (Jan. 1999).

[60] 13 CFR 121.201, SIC code 4813.

[61] FCC, Common Carrier Bureau, Industry Analysis Division, *Carrier* Locator, Table 1 (Oct. 2000)

rate-of-return carriers' administrative burdens.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[62]

36. The proposals in the MAG plan could have varying positive or negative impacts on rate-of-return carriers, including any such small carriers. Because most of the changes are actually elective options, a small entity should be able to assess the impacts as part of its decision-making process. The alternative to consideration of adopting the MAG proposal at this time would be to continue in effect the existing access charge and universal service fund rules applicable to these small carriers, or adopting a portion, or a modified version, of the MAG plan. Public comments are welcomed on modifications of the MAG proposal that would reduce any potential impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that take into account the resources of small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities that would be subject to the rules; and whether waiver or forbearance from the rules for small entities is feasible or appropriate. Comments should be supported by specific economic analysis.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

37. None.

C. Paperwork Reduction Act

38. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on information collections contained in this Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Notice of Proposed Rulemaking. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

V. COMMENT FILING PROCEDURES

39. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 30 days or fewer from publication in the Federal Register, and reply comments 45 days or fewer from publication in the Federal Register. Comments may be filed using the

[62] 5 U.S.C. § 603(c).

Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[63]

40. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

41. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

42. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Harris, Competitive Pricing Division, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 00-256, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

43. Parties who choose to file by paper and comment on universal service aspects of the MAG plan also should submit one paper copy of the comments to Sheryl Todd, Accounting Policy Division, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554.

44. Written comments by the public on the proposed and/or modified information collections are due on or before thirty days after the date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503.

VI. ORDERING CLAUSES

45. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j),

[63] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

201-205, 254, and 403 of the Communications Act of 1934, as amended,[64] this Notice of Proposed Rulemaking IS ADOPTED.

46. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

[64] 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403.

APPENDIX A:

Multi-Association Group (MAG) Plan and Exhibits