

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

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Service 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 of 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
	)	

**COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION**

TDS Telecommunications Corporation (TDS Telecom), on behalf of its 106 incumbent local exchange carriers (ILECs) in 28 states and by its attorneys, files these comments, in response to the Commission's Notice of Proposed Rulemaking released January 5, 2001, for the purpose of supporting coordination and adoption of the Multi-Association Group (MAG) plan.<sup>1</sup>

We also submit these comments with regard to the proper sequence of decisions on access issues raised in the Rural Task Force recommendation.<sup>2</sup> TDS Telecom strongly supports the joint comments of the four MAG associations and endorses that filing in its entirety.

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<sup>1</sup> FCC 00-448, In the Matter of Multi-Association Group (MAG) Plan For Regulation Of Interstate Services Of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers Federal-State Joint Board On Universal Service Access Charge Reform For Incumbent Local Exchange Carriers Subject To Rate-Of-Return Regulation Prescribing the Authorized Rate of Return For Interstate Services Of Local Exchange Carriers, CC Docket Nos. 00-256, 96-45, 98-77 and 98-177, FCC 00-448 (rel. Jan. 5, 2001).

<sup>2</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 00J-4 (released December 22, 2000) (Recommended Decision).

However, TDS Telecom wants to emphasize the need to avoid a critical procedural and substantive dilemma: This proceeding and the related proceeding on the recommendations of the Rural Task Force and the Federal State Joint Board on Universal Service (Joint Board) must be properly coordinated and sequenced. Otherwise, a premature decision on a single element of the Joint Board proceeding – the HCF III access reform and universal service issue – would abdicate this Commission’s role in deciding interstate access issues and would be fundamentally unfair to the many participants who have developed the comprehensive MAG plan as an integrated regulatory reform package. Indeed, prejudging the central access reform issues raised in the MAG group’s comprehensive regulatory plan, developed over two years at the former Chairman’s request, as a by-product of taking up the universal service proceeding first, would negate this Commission’s decision and the Joint Board’s recommendation for this Commission to decide overlapping issues in this proceeding, after obtaining adequate input on the universal service issues from the Joint Board.

**The Commission Should Carefully Coordinate and Simultaneously Decide the MAG Comprehensive Reform Proceeding and the Partially Overlapping Universal Service Proceeding**

The Commission must coordinate and sequence the MAG and the universal service proceedings so that it can responsibly exercise its sole jurisdiction with respect to the interstate access reform issues and reach a truly comprehensive reform determination, which the Commission urged the MAG group to develop. The MAG process came about because of the many long-standing separate proceedings proposing to modify virtually every aspect of federal regulation to which non-price-cap carriers and rural telephone companies are subject. Because the resulting regulatory uncertainty dampens incentives to invest and precludes efficient business planning by these small and mid-sized carriers, the MAG process took shape under the

Commission's auspices to develop a comprehensive or "holistic" reform package that would promote certainty and encourage investment in advanced network capabilities and services.

The Joint Board had asked the Rural Task Force to consider support issues for rural carriers. The Rural Task Force adopted a recommendation, which was passed through to this Commission with suggestions for proceedings about post-RTF universal service policies. In addition, Section 254 of the 1996 Act requires the participation of a Universal Service Joint Board in resolving federal universal service issues. Accordingly, it was clear from the outset that there would be some issues that would be common to both the universal service and the comprehensive MAG processes. Though cognizant that the Rural Task Force's universal service recommendations would have a major impact on any Commission decision on issues specifically within the realm of section 254, the MAG group undertook the former Chairman's challenge to bring in a comprehensive proposal that could be coordinated with the Rural Task Force and Joint Board efforts, and would be the vehicle for resolving access and other reform issues.

The two proceedings have gone forward independently, but have recently fallen onto parallel schedules. The current schedule for comments thus offers the Commission an opportunity to harmonize its decisions and outcomes in the two proceedings, by affording both sets of issues simultaneous consideration and decision. However, since the two proceedings are - - and should be -- separate, there is also the danger that some parts or all of the MAG proposal could be deprived of the careful and comprehensive consideration the plan deserves. This inequitable result would occur, for example, if the Commission decides all the issues in the Rural Task Force proceeding first and, especially, if a premature decision on what purport to be universal service issues prejudices the access issues raised in the comprehensive MAG proposal.

The prospect for tension between the two proceedings is most acute in the Rural Task Force's HCF III proposal. That part of the "universal service" plan is similar to the MAG plan's proposal for this Commission to prescribe interrelated changes in Subscriber Line Charges and per-minute access charges, and to establish Rate Averaging Support (RAS) to recover the remainder of current access costs. Both the Rural Task Force's HCF III plan and the MAG plan require the Commission first to determine new access charge levels. Thus, before reaching any universal service aspects of the HCF III proposal, the Commission must decide to adopt a new access charge structure and prescribe the proper levels for both flat-rated and per minute access charges. These essential first steps in the MAG plan and in the HCF III access reform principles unmistakably involve interstate issues entrusted by law to the federal Commission. The MAG plan's proposals for the structure and level of new prescribed access charge levels would clearly be prejudiced if some other access prescription emerged from the universal service docket before the Commission even took up the integrated MAG proposal. Put another way, only after prescribing a new structure and specific levels for access charges, as a matter of both logic and sequence, can the Commission consider the nature and size of a federal universal service mechanism to recover the remaining costs not recovered by the prescribed end user and carrier access charges.

Authority over the access issues clearly belongs to this Commission. The Commission and the Joint Board have both recognized that there is an overlap between the universal service issues raised by the MAG plan and the Rural Task Force recommendation sent forward to the Commission by the Task Force. Their decisions even agree about how to achieve the proper balance of Joint Board input and FCC jurisdiction in the face of the overlap.

The NPRM states that the MAG plan and the Rural Task Force recommendation overlap with regard to interstate and intrastate universal service issues. Consequently, it urges the Joint Board to participate in the MAG plan proceeding before this Commission on universal service issues.<sup>3</sup>

The Joint Board, in sending forward the Rural Task Force recommendation, reached the same conclusion about how to recognize jurisdictional and subject matter boundaries for the universal service issues shared by the MAG and RTF plans. With regard to issues that involve universal service elements, the Joint Board encouraged the Commission “to ensure that the Joint Board remains actively involved in matters related to universal service.”<sup>4</sup> However, the Joint Board rejected a proposal to seek referral of even the universal service issues in the MAG plan to the Joint Board, and expressly recognized the Commission’s interstate access jurisdiction:

We concur with the Rural Task Force that the Commission should consider creating an explicit universal service support mechanism to replace support that may be implicit within interstate access charges collected by rural carriers. We acknowledge, however, that the access charge issues raised by the Rural Task Force and the MAG are interstate in nature and, therefore, are properly before the Commission.<sup>5</sup>

The Commission should adhere to the jurisdictional boundaries that have already been set.

Maintaining these jurisdictional boundaries is also consistent with the posture of the parties to both proceedings. Some have suggested that the Rural Task Force recommendations may be on a faster track than the MAG plan owing to the nature of the process that gave rise to them. However, fundamental fairness dictates that the Commission should reserve a decision on both the HCF III access reform proposals and the MAG access proposals until it is ready to

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<sup>3</sup> NPRM, para. 4 (“We encourage input particularly from the Federal-State Joint Board on Universal Service (Joint Board) on the universal service aspects of the MAG plan.”); See, also, id. at paras. 18, 22.

<sup>4</sup> FNPRM at para. 20 (footnote omitted).

<sup>5</sup> Ibid. (footnote omitted).

decide the comprehensive MAG package of issues. There is no way to act on the HCF III universal service element -- which first appears only in the RTF's HCF III principles after the two access charge reform principles -- while holding the access issues in reserve.

As a practical matter, the preferable course for coordinating the two proceedings would be to decide them separately, but simultaneously. In that manner, the promised "holistic" resolution of the MAG issues and a decision about the whole package of Joint Board issues could be adopted and announced at the same time. It will be most equitable if the decisions cover both the RTF and the MAG packages in their entirety at the same time, since both are internally balanced as inter-related packages. Simultaneous complete decisions on both proposals should provide for an initial phase of implementation on July 1, 2001, thus immediately putting into effect some parts of the access and universal service reforms, and should direct NECA to begin immediately implementing the MAG plan carrier elections and pooling modifications, so that the five year transition to incentive regulation can start by January 1, 2002.

Should the Commission not be able to reach full decisions on both packages simultaneously in time for the initial implementation to start on July 1, 2001, however, it would be manifestly unfair to decide any part of the access charge reform issues in the Joint Board proceeding before reaching the MAG plan proposals. Consequently, at a minimum, the Commission should not act on the HCF III principles until it is ready to decide the MAG proposal in its entirety.

### **Conclusion**

The Commission should adhere to its own decisions and the Joint Board's recommendations (a) to decide access issues in a federal access charge reform proceeding (now pending with regard to the comprehensive MAG plan) and (b) to decide MAG universal service

proposals without referral to the Joint Board, but with adequate input and consultation with the Joint Board. The Commission should, if possible, adopt and issue full decisions on both the Rural Task Force proposals and the MAG plan simultaneously and in their entirety, in time for the initial phases of implementation to begin on July 1, 2001, with the five year transition to incentive regulation for Path A companies beginning on January 1, 2002. Finally, until the Commission fully resolves the MAG access issues, it must not make any decision with respect to the Rural Task Force's HCF III proposal.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Victoria C. Kim, of HOLLAND & KNIGHT LLP, hereby certify that true copies of the foregoing TDS Telecommunications Corporation's Comments on the following proceeding, CC Docket Nos. 00-256,96-45,98-77 and 98-166, have been served on the parties listed below, via first class mail, postage prepaid on the 26<sup>th</sup> day of February 2001.

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