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

REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

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March 12, 2001

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TDS Telecommunications Corporation (TDS Telecom), on behalf of its 106 incumbent local exchange carriers (ILECs) in 28 states and by its attorneys, files these narrowly targeted reply comments to respond to two arguments raised in the opening comments. As in the first round of comments, TDS Telecom relies upon and endorses the comments filed on behalf of the MAG group and seeks only to supplement the record with its views on these key issues.

Summary

TDS Telecom relies primarily on the reply comments of the Multi-Association Group, but adds its supplemental comments on two issues. This reply explains the need (1) to abandon all-or-nothing rules for participation in pooling and incentive regulation by affiliated ILECs and (2) to reject AT&T's proposals to grant a greatly augmented version of the MAG access charge reform package immediately -- including adopting the HCF III access reform proposal in the

universal service proceeding -- but to sideline or reject the incentive regulation component of the comprehensive MAG plan.

1. The MAG plan would do away with the Commission's traditional, but out-dated, rules that all commonly-owned ILECs must elect the same Common Line Pool status and must move to price caps regulation together and would not incorporate the all-or-nothing concept in its new revenue-based incentive mechanism. Despite comments demanding all-or-nothing requirements, the diversity of affiliated ILECs (including the TDS Telecom ILECs) forecloses a requirement that inescapably (1) dooms some affiliates -- such as TDS Telecom's 66,000-line Tennessee Telephone Company -- to a form of regulation that is less efficient for them or (2) dooms other affiliates -- such as TDS Telecom's very small companies serving an Indian reservation at the bottom of the Grand Canyon and four islands off the coast of Maine -- to move to incentive regulation before their study area conditions warrant the change. Both results prejudice the ILECs' customers, who are deprived of greater efficiency incentives in the first case and of necessary revenues in the second case, and the ILECs, which are hampered in competing and deprived of the stability needed for infrastructure investments. The rules have been eroding, for example, via common ownership of cost and average schedule companies, price cap transaction waivers, and common ownership of ILECs and CLECs, without resulting in the cost shifting and gaming the rules assume. The requirements are also complicating recent acquisitions, where applying them or granting even the usual limited waivers still lead to wrong results. The Commission has effective and proven accounting and cost allocation tools that work to prevent the feared results. The Commission should abandon this regulatory concept that has outlived its usefulness.

2. As TDS Telecom urged in its opening comments, the Commission should deal with the comprehensive MAG package promptly, as a whole, and all at once. The IXCs are seeking to increase the already-generous access reform benefits they stand to receive under the MAG plan and to resist all regulation, even enforcement of their compliance with the express statutory mandates for rate averaging and rate integration. Even with the total deregulation the IXCs claim, AT&T, echoed in part by other IXCs, supports immediate access reform in the Joint Board's universal service proceeding, rather than this pending comprehensive access reform proceeding, but demands deferral or rejection of the MAG incentive regulation proposals. The IXCs should not have a corner on the market for more efficient regulation or deny customers the benefits of either the legally-required rate averaging and discount plan availability that the MAG access reductions will facilitate or the impetus to competition and efficiency that the plan will also spark.

The Commission Should Permit Each of TDS Telecom's Highly Diverse ILEC Study Areas to Elect the Form of Regulation Most Consistent with Its Serving Area Characteristics and Customer Base

One of the major benefits of the MAG proposal is that it would not incorporate the out-dated "all-or-nothing" rules that require all carriers and all study areas under common ownership to be uniformly under price caps or rate of return regulation and to participate or withdraw from the National Exchange Carrier Association's (NECA's) Common Line pool and tariff only as an affiliated group.[1] The MAG incentive regulation plan also would not follow the example of the

[1] 47 C.F.R. section 61.41 (c) (1)-(3) requires that all commonly-owned ILEC study areas that perform cost studies must convert to price caps regulation and leave the NECA pools if even one of them converts or if even a single exchange is acquired from a price cap carrier. 47 U.S.C. section 69.3(e)(9) requires that all affiliated ILEC study areas must be members of the NECA Common Line Pool or leave the pool as a group, with specified exceptions to accommodate certain merger and acquisition transactions.

price cap rules requiring all commonly-owned rate of return carriers that acquire even a single price cap exchange to de-pool and convert all of their study areas to price caps regulation within one year, the "forced conversion" rule.[2] The result of these rules is to prevent commonly-owned carriers from electing the form of regulation or pooling status suited to their individual characteristics, the nature of their individual markets and the needs of their customers.

Although AT&T (p. 14) and Global Crossing (pp. 13-14) advocate retaining the all-or-nothing rules, these restrictions do not allow for the differences among affiliates that equal or exceed the differences within non-affiliated ILECs, have outlived any perceived usefulness and are incompatible with the competitive environment created by the 1996 Act. Consequently, all-or-nothing concepts have no place in a comprehensive reform plan for rate of return (ROR) ILECs in the 21st century.

The Commission has long known that small and rural ILECs are significantly different from the very large, generally urban-centered price cap carriers. The 1996 Act recognized that such carriers warranted different regulatory treatment in Sections 214 (e) (2), 251 (f)(1) and (2) and 253 (f). The Rural Task Force (RTF), recently catalogued the differences between non-rural and rural carriers in its second white paper.[3] The study also demonstrated that the smaller companies, those within the definition of "rural telephone company," are also diverse.[4] The TDS Telecom ILECs exhibit the range and diversity shown within the rural telephone company classification, with study areas that vary significantly from price cap ILECs' areas and among

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[2] 47 C.F.R. § 61. (c)(3) The rule allows companies to maintain average schedule companies as NECA pool members because those affiliates are under a form of regulation "that creates economic incentives similar to …price caps." See Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd. 6786, 6820(1990) (Price Caps).

[3] Rural Task Force, White Paper #2 : The Rural Difference (2000) (White Paper # 2). Data for the TDS Telecom ILECs, in part, were included in the information used in reaching the RTF's determination that a proxy model does not work for rural companies.

[4] Ibid.

themselves.[5] For example, TDS Telecom's 106 ILECs serve from 509 access lines to 66,250 access lines, spread through 28 states, with an average of 5,700 lines. The TDS Telecom ILECs' service territories range from 31.8 square miles to 4,617 square miles. Their density ranges from less than 1 access line per square mile to 600 access lines per square mile, with an average density of less than 17 for the 106 ILECs, well below the non-rural carrier average of 128 lines per square mile and below the rural telephone company average of 19 lines per square mile.[6] The TDS Telecom ILECs' costs per line range from $2,910 to $450.

With diversity of this magnitude among the TDS Telecom operating companies, it is not surprising that some of them will be ready earlier to leave ROR regulation behind and accept the risk of incentive regulation or to leave the NECA pools entirely. Individually owned rural ILECs have these choices. But, under the current rules, affiliated companies do not, no matter how diverse they are. Thus, the largest TDS Telecom ILEC, Tennessee Telephone Company, which serves 66,000 access lines in an area with several large business customers likely to attract competition by cream-skimmers, might have elected price caps and left the NECA pools had it been free to do so on its own. However, Arizona Telephone Company, serving the 3,930 Supai Reservation access lines at the bottom of the Grand Canyon and The Island Telephone Company, serving 667 access lines on 4 islands off the coast of Maine, both briefly profiled in the Rural Task Force's White Paper #2 (pp. 17-18), are unique places that are isolated and costly to serve, where one-size-fits-all regulation makes no sense at all. Consequently, the customers in any

[5] Each TDS ILEC typically has only one study area, except where an ILEC spans a state boundary.
[6] White Paper #2 at 34.

TDS Telecom ILEC study area that is reasonably able to undertake a plan with cost reduction incentives are denied the benefits the Commission expects from incentive regulation.[7]

In the competitive national marketplace the 1996 Act ushered in, it is increasingly crippling to hamper a carrier's business planning and ability to compete by demanding holding-company-wide regulatory and pooling uniformity for disparate ILECs. Nor is uniformity needed for the purposes that led to the adoption of the all or nothing and forced conversion rules: the Commission's fear of cost shifting between companies and the notion that carriers could sequentially migrate between regulatory regimes for profit, thus "gaming the system."[8]

The "all or nothing" restrictions have already begun to erode (though not sufficiently for the post-1996 Act environment) without causing cost shifting or gaming. In fact, the Commission adopted exceptions to the pooling all-or-nothing rules[9] not long after adopting them, in order not to stifle transactions that could improve efficiency and customer service.[10]

Common ownership of cost-based and average schedule companies, an exception to the all-or-nothing regime, has been allowed for years. There is no evidence that the exception has caused any cost shifting or other abuses. Yet, as noted above, the Commission has held that average schedule settlements provide the same kind of incentives as price caps because they "depend upon the demand for the services that [the carrier] provides rather than upon its costs of

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[7] See, e.g., Alltel Corp. Petition for Waiver of Section 61.41 of the Commissions rules and Petitions for Transfer of Control, 14 FCC Rcd. 14191, para. 34 (1999) (Alltel Waiver) (The Commission has "articulated a policy judgment that incentive-based regulation is generally superior to rate-or-return regulation…." but has "recognized that small telephone companies should not be forced into a regulatory paradigm that was designed largely on the basis of historical performance by the largest LECs.")

[8] With one-way elections like those the MAG plan proposes, the "gaming" issue comes up only with regard to acquisitions.

[9] 47 C.F.R. § 69.3(g).

[10] Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange Carriers Involved in Mergers or Acquisitions, CC Docket No. 89-2, 5 FCC Rcd. 231 (1989) (allowing ILECs involved in mergers or acquisitions to retain their pooling status indefinitely and to bring up to 50, 000 lines back into the NECA Common Line pool).

providing those services."[11] The incentives the Commission found in average schedule regulation led it to permit common ownership of price caps and average schedule study areas, and even to justify continued pool participation by average schedule affiliates of price cap carriers.[12] Since this amounts to allowing continuing affiliations among incentive-regulated and ROR carriers, the absence of resulting problems compellingly supports further relaxation of all-or-nothing requirements.

Although the Commission has not relaxed the price cap all-or-nothing rule requiring conversion to price caps for an ROR carrier involved in a merger or acquisition also involving a price cap exchange or carrier, it has allowed acquired price cap exchanges to revert to rate-of-return regulation (as long as they do not switch again without "prior Commission approval"), thus avoiding pointless alarm about "gaming the system."[13] The Commission has reiterated in granting these routine waivers that forcing rate of return companies into price caps regulation is not sound policy.[14]

The Commission has also, from the outset, allowed non-price cap companies to withdraw from (and rejoin) the NECA Traffic Sensitive (TS) pool without requiring uniform elections by their affiliates. Notwithstanding numerous instances of affiliates that have operated simultaneously in and out of the traffic sensitive pool, there has been no showing that cost

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[11] Price Caps, supra n. 2, at 6820.
[12] 47 C.F.R. § 61.41(c)(3.
[13] See, e.g., Mescalero Apache Telecom, Inc., GTE Southwest Incorporated, and Valor Telecommunications of New Mexico, LLC, Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules; Mescalero Apache Telecom, Inc., Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission's Rules, DA 01-129, CC Docket No. 96-Jan. 18, 2001) (Chief, Accounting Policy Division). The MAG plan similarly proposes a rule of one-way elections, subject, of course, to the Commission's general authority to waive its rules for good cause, i.e., to approve the requested change.
[14] Ibid.

shifting has occurred. Presumably, if uniformity in Common Line pool status were necessary to prevent cost shifting, there would be similar opportunities to shift TS costs from affiliates that file their own tariffs to affiliates that recover their costs from the NECA TS pool. Here again, there is no evidence of cost shifting or abuse.

The Commission even allows common ownership of ROR ILECs and virtually unregulated CLECs. Again, there is no evidence that cost shifting results from such affiliations, which plainly are helpful in developing competition with ILECs.

The Commission's old concerns about cost shifting are now addressed successfully by its accounting and allocation rules. The Commission relies on its regulated and unregulated cost allocation rules (47 C.F.R. sections 64.901, et seq.) to prevent misallocations of the costs of competitive activities to regulated affiliates. It relies on its Part 32 accounting rules (which many states also require), which govern how ILECs record and identify their costs, to ensure that shifting can be detected. And it relies on its Part 36 jurisdictional separations rules to prevent misallocations of costs between the state and federal jurisdictions. And it relies on its affiliate transaction rules (47 C.F.R. sections 32.27, 64.902) to prevent cost shifting between affiliates in their transactions with each other. ILECs, whether ROR or incentive-regulated, are subject to these rules. States have their own regulations and processes to identify costs and prevent cost shifting or cross subsidies that could harm customers.

These federal and state procedures are working well, even with a growing number of states moving to alternative, incentive-based intrastate regulation which can place a single company under ROR regulation for interstate purposes and under incentive regulation for intrastate purposes. Significant problems have simply not developed. The wide diversity among

affiliated carriers such as the TDS Telecom ILECs and the lack of a record of cost shifting or gaming abuses should persuade the Commission that it need not recreate a heavy handed all-or-nothing solution for the speculative problems of cost shifting and gaming when it adopts comprehensive regulatory reform for ROR carriers.[15] If either were to occur, the Commission has the tools to deal with it.

Advocates of the all-or-nothing rules conveniently ignore that uniformity rules have become even more obsolete since the adoption of the CALLS plan. CALLS adopted $650 million in capped, negotiated interstate access support to make explicit the support previously implicit in price cap carriers' access charges. With the CALLS explicit access support ceiling, carriers forced onto price caps through an exchange acquisition from a price caps carrier – and their customers – would be deprived of access revenues when their rates became subject to the CALLS target rates. However, there would be no explicit support to take its place. Thus, price caps regulation after CALLS does not afford a realistic choice or lawful prescription for any rate of return carrier. When the Commission adopts a new incentive plan for carriers that have no real incentive regulation option today, the price caps all-or-nothing and forced conversion rules will not be applicable. The Commission should not replicate them in a plan developed to optimize post-1996 Act and post-CALLS regulation. In addition, it should repeal (1) the price caps all-or-nothing rules that still impede transactions that would serve customer interests and (2) the pooling all-or-nothing rules that foreclose carriers that can more efficiently file their own tariffs with costs more closely aligned with their costs from doing so. The deregulatory purpose of the 1996 Act should guide the Commission to conclude that its existing safeguards can

[15] It is important to understand that the MAG plan proposes a new form of revenue-based incentive regulation, not price caps regulation. We are perplexed by AT&T's references (p. 14) to the MAG plan as "price caps." The price cap regulations would not be applicable.

function without heavy-handed one-size-whether-it-fits-or-not requirements for affiliated rural telephone companies such as the TDS Telecom ILECs.

The increasingly poor fit of all-or-nothing regulation with regulatory and marketplace facts has left the Commission grappling with merger and acquisition cases where slavishly following the existing rules is troubling for different reasons. The acquisitions of Aliant by Alltel and of Puerto Rico Telephone Company by GTE (now part of Verizon) have underscored the strains placed on carriers' business arrangements and customers' access to companies under the most appropriate and efficient form of regulation. The issues that have not been satisfactorily resolved under the existing rules in the two cases take different forms.

When Alltel acquired Aliant, the buyer's study areas were all under ROR regulation and in the NECA Common Line pool, pursuant to the all-or-nothing rules. The acquired company had elected, and was operating successfully under, price caps regulation. The Commission granted a waiver for the Alltel companies to remain under ROR regulation, agreeing that putting the whole group under a single productivity factor would not be suitable.[16] It held that Alltel's "properties are scattered largely in small to mid-sized towns and cities in 22 states and Alltel is, therefore, unlike many of the large BOCs, and more similar to smaller carriers."[17] However, the Commission applied the all-or-nothing rule to require Aliant to convert back to ROR regulation. That change, which reverses a move towards regulation that is more efficient for a carrier in Aliant's circumstances, has been temporarily waived by the Commission.

[16] Alltel Waiver, para. 25.
[17] Id., para. 35

For GTE's acquisition of the Puerto Rico Telephone Company (PRTC), the all-or-nothing rules are forcing the wrong result for the opposite reason. The GTE companies (now part of Verizon) are mandatory price cap companies, while PRTC is an ROR company and NECA pool participant. The forced conversion of PRTC to price caps required by the rules would force it to leave the NECA pools and forfeit Long Term Support of $89 million.[18] Uncomfortable with the situation, the Commission extended PRTC's deadline to convert to price cap regulation to July 1, 2001, while it considers PRTC's waiver requests to remain subject to ROR regulation or, alternatively, to receive LTS for a transitional period. In addition to the adverse impact on PRTC's rates and the implications for the NECA pools, the Commission recognized that it "must give due consideration to the potential impact the CALLS proceeding may have on PRTC when PRTC converts to price cap regulation."

These cases, the many waivers of the all-or-nothing rules to allow acquired price cap exchanges to convert back to rate of return regulation, the non-harmful exception for ROR/average schedule affiliates, as well as the added unsuitability of price caps for rate of return carriers resulting from the CALLS plan and the national deregulation and competition policies, taken together, demonstrate that the all-or-nothing rules are simply not working well under the changing conditions in the industry and the marketplace. The Commission has an opportunity in fashioning incentive regulation for non-price cap companies to abandon the all-or-nothing requirements that are becoming increasingly out-of-step with the post-1996 Act environment and the goal of ensuring that regulation is optimal for the multiple and diverse rate of return carriers and their customers. Accordingly, TDS Telecom urges the Commission to reduce its regulatory

[18] Puerto Rico Telephone Company Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules, FCC 00-199, CCB/CPD No. 99-36, 15 FCC Rcd 9680, para. 2 (2000).

interference with legitimate carrier business decisions and regulatory elections and to adopt the more efficient approach in the MAG plan.

Access Reform and Incentive Regulation Issues Should Be Decided Simultaneously and Comprehensively Because They Are Inseparably Interrelated

TDS Telecom explained in its opening comments why the Commission should decide the MAG issues comprehensively, as well as soon, and coordinate consideration of the Rural Task Force plan to ensure that access decisions are properly made by this Commission and in this proceeding. Instead of comprehensive reform, for example, AT&T (p. 3) presses for immediate access reform and later, separate proceedings on incentive regulation. Sprint (p. 12) urges the Commission to reject the MAG proposals and to send the rate of return carriers off to re-design the whole MAG plan. GCI supports access reform, but opposes incentive regulation. AT&T (p.3) calls for decision of the access issues in connection with the HCF III portion of the RTF proposal.

The Commission should not fragment the MAG plan or this proceeding. The access, pooling and incentive regulation components of the MAG plan are part of an integrated reform package, not a series of stand-alone proposals. A holistic solution was the fundamental purpose and reason for the MAG group's efforts. The Commission should not accede to AT&T's effort to smuggle access issues into the universal service recommendation and then try to secure the access plan it wants in the universal service proceeding instead of in this interstate access proceeding the Commission is conducting in response to the MAG proposal.

By coordinating the MAG comprehensive access and the separate RTF universal service proceedings, the Commission can decide all of the comprehensive issues raised by the MAG proposal at the same time. That will avoid the need for the Commission to cede its access

authority to the Joint Board, which recognized the Commission's sole authority over interstate access matters.[19]

Indeed, the Commission should see the attacks by AT&T and the other IXCs on the substance and timing of the MAG plan for the selective and self-interested efforts they are. The IXCs seem to claim the 1996 Act's objective of reduced regulation entirely for their segment of the industry. Apologists for interexchange carriers predictably seek to benefit themselves by arguing for lower access charges for IXCs, complete freedom from regulation for IXCs and postponement or elimination of significant regulatory reform for local exchange carriers. AT&T (p. 2), Global Crossing (p. 2), and Worldcom (p. 2) endorse the SLC increases, for example, which the MAG group has estimated will reduce rate of return companies' access charges by $702 million in the first year and $5.2 billion over a five year period, assuming that all study areas are subject to Path A incentive regulation. Sprint (p. 6) even urges higher SLCs, both overall and for non-primary lines. AT&T (p. 18) not only seeks to transfer additional costs to Common Line, but also wants SLCs at CALLS caps even if they are not "reasonably comparable" as the Act requires. All of the IXCs assert that per minute rates of $0.016 are too high, and seek to impose the CALLS "rural" rate ($0.095) or an even lower traffic sensitive rate on rate of return carriers. Most IXCs also state that the RAS and resulting per minute rate reductions should apply to the Path B carriers and even to carriers that leave the NECA pools. (see, e.g., AT&T, p. 2). All of these changes would help to increase IXC profits.

IXCs also protest any regulation or enforcement of the rate averaging and rate integration mandates of section 254(g) of the 1996 Act. GCI (pp. 7-8) opposes requiring regional carriers to

[19] Federal-State Joint Board on Universal Service, Recommended Decision, FCC 00J-4, CC Docket No.: 96-45, para. 20 (rel. December 22, 2000) Adopted: December 22, 2000.

flow their savings through as long distance rate reductions. In contrast, the competitive advantages that rate averaging supposedly confers on carriers with limited scope of operations is one of the main reasons AT&T gave for its earlier efforts to persuade the Commission to forbear from requiring rate averaging.[20] AT&T also objects (p. 20) to providing optional calling plans to those rate of return company customers to whom they are not available. Although FCC rules to require averaging are explicitly required by section 254(g), Global Crossing warns (pp. 10-11) that averaging rules could motivate IXCs not to serve rural areas.[21]

Despite the major benefits that the IXCs demand from access reform and their opposition even to enforcement of the federal statute requiring them to average long distance rates, the IXCs seek to delay or scuttle any reduction in regulation for rate of return carriers. AT&T also objects to abandoning the rate of return prescription proceeding and even to the separations freeze recommended by the Separations Joint Board.

The Commission should reject the IXCs' "me first, me only" demands for the Commission to take only the parts of the MAG plan that benefit IXCs, augment these benefits, and jettison the remainder of the comprehensive review proposal. Instead, the Commission should decide promptly and comprehensively to adopt the whole integrated reform plan the MAG group developed at the former Chairman's request.

Conclusion

The MAG associations' joint reply comments respond to the arguments of the IXCs and other parties in detail. TDS Telecom does not seek to replicate that pleading, but fully supports

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[20] Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, FCC 96-331, 11 FCC Rcd 9564, para. 36 (1996).

[21] The Wisconsin Public Service Commission, in contrast, takes a stand for consumers, supporting the use of Rate Averaging Support to promote geographically averaged rates. Wisconsin also correctly states that this Commission has the authority and the duty to enforce section 254(g).

it. In addition, TDS Telecom respectfully urges the Commission (1) to give careful, prompt, simultaneous and favorable consideration to all parts of the comprehensive MAG proposal in the light of the deregulatory thrust of the 1996 Act, (2) to take this opportunity to adopt an incentive regulation plan for ROR companies that does not force affiliated, but extremely diverse, carriers to choose as a group the same form of regulation at the same time and (3) not to bury or bifurcate the incentive regulation proposal and deprive ROR companies that are ready for incentive regulation and their customers of the beneficial efficiency incentives that the Commission has found to serve the public interest best when applied to carriers for which incentive regulation is appropriate and feasible.

Respectfully submitted,

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March 12, 2001

CERTIFICATE OF SERVICE

I, Victoria C. Kim, of HOLLAND & KNIGHT LLP, hereby certify that true copies of the foregoing TDS Telecommunications Corporation's Reply 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 12th day of March 2001.

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* Denotes Hand Delivery

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