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

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 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 TCA

I. Introduction

TCA, Inc. - Telcom Consulting Associates (TCA) hereby submits these reply comments in response to the FCC's notice of proposed rulemaking (NPRM) on the MAG Plan, which modifies the interstate regulatory environment for local exchange carriers (LECs) subject to rate-of-return (RoR) regulation. TCA is a consulting firm, which performs financial and regulatory services for over fifty small, rural LECs throughout the United States. All of TCA's clients are subject to interstate RoR regulation and therefore will be directly impacted by the FCC's actions in this proceeding. These comments address the concerns of TCA's clients.

II. Incentive Regulation

A. The Low End Adjustment (LEA) must be adopted as proposed to make the plan viable for smaller LECs.

Several commenters suggested elimination, or radical modification, of the LEA[1]. Should the FCC choose this course of action, it would undoubtedly eliminate incentive regulation as a viable option for an overwhelming number of RoR LECs. When the tier one LECs (BOCs and GTE) converted to incentive regulation (price caps) the FCC provided these carriers, who typically serve millions of customers in high-density areas, a "safety net"[2]. This safety net, the ability to "reset" their caps, did not go unused.

Due to their smaller customer base, limited geographic areas and fewer economies of scale, RoR LECs have more much exposure to business risk than the larger price cap LECs. Smaller LECs, with more uneven investment patterns than larger LECs, will be extremely reluctant to commit to an incentive regulatory scheme that does not include a viable safety net. Frankly, the suggestion that RoR LECs, who frequently serve less than a thousand customers in low-density areas with a handful of employees[3], adopt incentive regulation without a safety net is ludicrous. The FCC should see this proposal for what it is – an attempt to prevent the RoR LECs from converting to incentive regulation.

Finally, the suggestions that the LEA guarantees existing returns[4] or makes the plan risk-free[5] are incorrect. For the largest RoR LECs, the MAG plan exposes an identical amount of return to risk, one-hundred basis points, as the initial price cap plan for tier one LECs,[6] despite the fact that these two categories of carriers have little in common[7]. Unlike the resetting of price caps, increased revenues attributable to the LEA apply only to the year of the filing. The LEA does not adjust a LEC's revenue per line (RPL) on a go-forward basis, which virtually eliminates the ability to "game" the system. TCA anticipates that the cost of a filing, combined with the one-year limit, will limit the LEA usage to only LECs encountering severe financial hardship.

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1 ASCENT comments at 4, AT&T comments at 17, CUSC comments at 16
2 Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, *Second Report and Order*, 5 FCC Rcd 6786 (1990)
3 According to NECA's *Access Market Survey* (December 1999) 56% participants in the traffic sensitive pool serve less than 2,500 customers.
4 CUSC comments at 16
5 Sprint comments at 7
6 ASCENT comments at 4
7 See Rural Task Force, *White Paper 2: The Rural Difference* (January 2000).

B. The MAG plan correctly leaves the timing of conversion to incentive regulation with the affected LEC.

Under the MAG plan, individual LECs determine the appropriate time to convert from receiving revenues on an embedded cost basis to a per-line basis. Unfortunately, should Rural Task Force (RTF) recommendation be adopted, many LECs have this decision made for them. Unlike the MAG plan, the RTF proposes freezing HCL support once a second eligible telecommunications carrier (ETC) is certified for the service territory of the incumbent LEC.[8] The Public Service Commission of Wisconsin has also identified this flaw in the RTF recommendation:

> As far as timing a switch to incentive regulation, it is appropriate to let utilities determine when to switch. There is a belief that the lack of a defined federal USF program for rural areas has inhibited investment in these areas. To lock in support levels based upon existing investment levels could be harmful to rural areas.[9]

The Public Service Commission of Wisconsin is correct; this extremely important decision cannot be removed from the affected LEC and transferred to its competitors and state commission. The RTF recommendation must be modified to conform to the MAG plan and allow LECs electing incentive regulation to control the timing of the decision.

III. Competition

A. To ensure the advancement of universal service, the FCC must insist upon regulatory parity between all providers.

Wireless competitors argue against regulatory parity for competitive ETCs and incumbents[10]. In other words, they want access to high cost support mechanisms designed to protect and advance universal service without any of the obligations that accompany these funds. In seeking ETC status in numerous states, Western Wireless (WW) has claimed their commercial mobile radio service (CMRS) status exempts them from state commission quality of service rules. Additionally, WW has sought access to state high cost funds without the offering the

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8 RTF recommendation, Section IV (B)(1)(c)(ii)
9 Public Service Commission of Wisconsin comments at 10
10 CUSC comments at 6.

required supported services.[11] Finally, WW has sought the disaggregation of rural study areas, not because of an inability to offer service due to licensing restrictions, but to avoid serving high cost exchanges of small rural providers.[12] The rationale offered by the wireless providers for this uneven regulation, is the rural incumbent LEC's market dominance. This conveniently ignores the fact that the wireless competitor is typically not a new provider, but has been providing service in the area for years, possibly has more customers than the incumbent LEC, and typically has financial resources far beyond that of a small, rural LEC.

B. Rural LECs must be allowed to target universal service support to high cost customers.

Disaggregation of support is not a procedure to hide support from competitors, as implied by some MAG opponents,[13] but a process to ensure high cost support is targeted to high cost customers. According to the Rural Task Force:

> [t]here is a reasonable consensus that the disaggregation of universal service support into smaller geographic areas furthers the goals of the 1996 Act by benefiting the highest cost rural customers and enabling competitive market entry.[14]

In other words – disaggregation benefits the incumbent <u>and the competitor</u>. The assertion that "that a rural LEC has an incentive to target an excessive amount of support to the areas/zones where a competitive ETC is unable or <u>*unlikely*</u> (*emphasis added*) to serve[15]" is unsupported by economic theory. In fact the opposite is true, allocating "excessive" support to low cost customers sends incorrect economic signals and actually would increase the incentive for a competitor to pursue those customers. Any proposal to prohibit rural LECs from targeting universal service, frankly, lacks credibility and should be rejected.

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[11] Western Wireless has sought access to state high cost funds in Colorado and Kansas, despite failing to offer one of the supported services (equal access) claiming it was too expensive to provide.

[12] Western Wireless is seeking permission from the Colorado PUC to disaggregate the service territory of a Colorado LEC serving less than 2,000 customers in 3 exchanges, despite the fact that the LEC's entire study area resides within Western Wireless' certificated service territory.

[13] Ad Hoc Telecommunications User Committee (Ad hoc) comments at 25

[14] See Rural Task Force, *White Paper 6: Disaggregation and Targeting of Universal Service Support* (September 2000).

[15] Ad Hoc comments at 25

TCA does find the admission that a competitive ETC may be *unwilling* to serve certain customers quite enlightening. In order to gain ETC designation a provider has to agree to serve all customers within the service territory of the incumbent. This commenter has merely acknowledged what many incumbent LECs have long suspected; despite assurances otherwise, most competitive ETCs have no intention of serving high cost, rural customers and accordingly, do not want the appropriate amount of support allocated to them. Instead, they prefer the status quo, under which an average support amount is allocated to each customer. This enables the competitor to receive support far in excess of actually providing service to those few low cost customers they choose to serve. In this situation (referred to as "cream skimming"), the incumbent LEC must then attempt to serve the remaining high cost customers with insufficient levels of support

IV. Access Reform

A. Access Reform for RoR LECs must be revenue neutral.

The requirements of the 1996 Telecommunications Act (the Act) are not limited to the conversion of implicit subsidies contained in the existing rates to explicit mechanisms. Additionally, the Act requires that the support be sufficient to advance and preserve universal service.[16] Qwest contends that the access reform plan proposed by the MAG plan is overly generous, because it envisions a revenue neutral reduction in access rates.[17] In support of its argument, Qwest cites the FCC's recent access reform for price cap LECs.[18]

This comparison ignores several differences in the circumstances surrounding the two versions of access reform. First, the price cap LECs were already operating under incentive regulation when the CALLS plan was negotiated. Their interstate earnings were not constrained by a subscribed rate-of-return, which more than likely enabled them to earn a higher return than the RoR LECs. This is evidenced by the fact that LEC members of CALLS voluntarily negotiated away a portion of these earnings to obtain a mutually beneficial agreement with the interexchange carriers. Second, the CALLS order allows price cap LECs to "opt out" of the

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16 Section 254(e)

17 Qwest comments at 4

18 *Access Charge Reform, Price Cap Performance for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, CC Docket No. 96-262 *et al*., Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC00-193 (released May 31,2000) (the "CALLS" order).

access charge reductions mandated under the plan[19] should they be unsatisfied with their resultant interstate earnings levels.

V. Conclusion

The MAG plan, as proposed, serves the public interest and accordingly, should be expeditiously adopted. Suggestions that the incentive regulation provisions of the plan be delayed, or eliminated, must be ignored. In order to comply with the Act, implicit subsidies contained in access rates must be made explicit, not eliminated. Adoption of the MAG plan enables the FCC to finally advance the Act's twin goals of promoting fair competition and universal service to the benefit of all Americans.

Respectfully submitted,

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[19] *CALLS Order* at ¶57