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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 12, 2001

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW Room TWB-204
Washington, D.C. 20554

Re: Reply Comments of Excel Communications, Inc.,
CC Docket Nos. 00-256, 96-45, 98-77, 98-166

Dear Ms. Salas:

Enclosed please find an original and eight copies of the Reply Comments of Excel Communications, Inc. in the above-referenced matters. Please feel free to contact me if you have any questions.

Sincerely,


Robert J. Aamoth

Enclosures

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Before the
Federal Communications Commission
Washington, DC 20554

Multi-Association Group (MAG) Plan for) CC Docket No. 00-256
Regulation of Interstate Service of)
Non-Price Cap Incumbent Local Exchange)
Carriers and Interexchange Carriers)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)
Access Charge Reform for Incumbent) CC Docket No. 98-77
Local Exchange Carriers Subject to)
Rate-of-Return Regulation)
)
Presubscribing the Authorized Rate of Return) CC Docket No. 98-166
for Interstate Services of Local Exchange)
Carriers)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF
EXCEL COMMUNICATIONS, INC.**

Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking¹ in the above-captioned proceedings, Excel Communications, Inc. ("Excel"), by its attorneys, hereby files its reply comments on the Multi-Association Group's ("MAG") proposal for interstate access reform and universal service support for incumbent local exchange carriers ("LECs") subject to rate-of-return ("ROR") regulation (the "MAG Plan").

¹ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, and 98-166, Notice of Proposed Rulemaking, FCC 00-448 (rel. Jan. 5, 2001) ("NPRM").

I. INTRODUCTION AND SUMMARY

Excel is the fourth largest long distance carrier in the United States in terms of presubscribed lines. Through a combination of its own backbone network facilities and resale, Excel offers a full range of residential and business long distance services, as well as Internet access, paging, 800 service, and calling card services. In providing long distance services to end users throughout the nation, Excel purchases substantial volumes of access services from numerous LECs, including many LECs subject to rate-of-return regulation. Thus, Excel has an important interest in this proceeding.

As a general matter, Excel supports the MAG's effort to reduce per-minute interstate access charges while moving away from rate-of-return regulation to an incentive-based system. As noted by numerous interexchange carriers ("IXCs"), regulators, and consumer groups, however, the MAG Plan contains several serious shortcomings that must be addressed by the Commission. Excel supports the views of these commenters and offers these reply comments on three main points. First, the MAG Plan lacks a presumption of reasonableness because it was not developed through industry consensus, as was the Coalition for Affordable Local and Long Distance Service ("CALLS") Plan, which the Commission adopted for price-cap LECs.² Second, to move the MAG Plan towards industry consensus, the MAG Plan should be modified by: (a) making the Rate Averaging Support ("RAS") plan for universal service mandatory for all ROR carriers, (b) capping the RAS fund to the amount needed to maintain universal service, and (c) adopting the CALLS subscriber line charge ("SLC") and traffic

² See, *Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 94-2, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 1679 (2000).

sensitive rates for rural price cap LECs, or offering evidence in support of an alternative. Third, the Commission should reject the MAG Plan's proposed regulation of IXC prices.

II. THE MAG PLAN LACKS A PRESUMPTION OF REASONABLENESS BECAUSE IT WAS NOT DEVELOPED THROUGH INDUSTRY CONSENSUS, AND SHOULD THUS BE VIEWED CRITICALLY BY THE COMMISSION

As noted by numerous commenters, the Commission should not give the MAG Plan any presumption of reasonableness because the MAG Plan represents only the views of small and mid-sized ROR LECs.³ The MAG Plan does not result from the give-and-take negotiations between LECs and IXCs that resulted in the CALLS plan, and therefore the Commission should engage carefully in *de novo* scrutiny of all aspects of the MAG Plan.

Many important aspects of the MAG Plan are entirely lacking in evidentiary support. For example, regarding MAG's proposed composite access rate ("CAR"), Sprint correctly notes that "[n]o intrinsic support for the target CAR of 1.6 cents per minute" is provided, even though this rate is "far higher than the target rates adopted under CALLS" for similarly situated ROR carriers.⁴ The RAS proposed in the MAG Plan similarly lacks evidentiary support, and essentially "work[s] as an insurance policy to guarantee that rural ILECs meet their targeted rates of return."⁵ While in theory it is possible that access charge and

³ See, e.g., Association of Communications Enterprises ("ASCENT") Comments, 2; Competitive Universal Service Coalition ("CUSC") Comments, 8-9; Sprint Comments, 3-4.

⁴ Sprint Comments, 5.

⁵ CUSC Comments, 8; see also Qwest Comments, 5; and Ad Hoc Telecommunications Users Committee Comments, 12-15.

universal service levels for ROR carriers should be different from those of comparable price-cap carriers, the MAG Plan fails to provide any evidentiary basis for such disparities. Thus, the Commission should not adopt the MAG Plan “as is,” and indeed, the Commission should take a hard look at the various rate levels proposed by MAG and insist upon strong evidentiary support before approving rate levels that depart from the CALLS plan.

III. THE COMMISSION SHOULD MODIFY AND CAP THE RAS, AND REQUIRE MAG TO ADOPT – OR JUSTIFY DIVERSIONS FROM – CALLS PRINCIPLES FOR RURAL CARRIERS

To move the MAG Plan towards industry consensus, the Commission should, at a minimum, modify the MAG Plan by: (a) making the RAS plan for universal service mandatory for all ROR carriers,⁶ (b) capping the RAS,⁷ and (c) adopting, or justifying diversions from, CALLS principles for rural carriers.⁸ Taking these steps will help ensure that the MAG Plan, or any regime the Commission adopts based thereon, contains reasonable universal service support, and is tied to the access rates developed for similarly situated carriers in the CALLS Plan.

As CUSC notes, “[t]he RAS fund, as proposed in the MAG plan, would be excessively large, and would impose undue contribution burdens on telecommunications carriers and consumers around the country.”⁹ AT&T adds that if the RAS is restricted to Track A providers, as proposed by the MAG Plan, then other LECs would be pressured to “charge higher

⁶ AT&T Comments, 8-10; CUSC Comments, 8.; Sprint Comments, 8-9

⁷ CUSC Comments, 8; Sprint Comments, 8-9; Worldcom Comments, 13-16.

⁸ AT&T Comments, 5-7; CUSC Comments, 8.

⁹ CUSC Comments, 8.

traffic sensitive rates.”¹⁰ Moreover, unlike the CALLS universal service fund, which is capped, the MAG RAS would grow in direct proportion to line growth with no upper limit. Although the details and rationale of the MAG universal service fund are unclear, “it is apparent that one effect of the MAG plan, and in particular the creation of the RAS, will be to increase the universal service funding burden on IXCs, other LECs, and all of their customers.”¹¹ As such, Excel agrees that “before creating a new universal service fund, the Commission should require the MAG carriers to demonstrate the need for such a fund on a rationale basis, and (should the need for such a fund be demonstrated) impose a reasonable dollar limit on the size of the fund.”¹²

The MAG proponents also fail to offer cost support for the proposed SLCs and traffic sensitive costs. As Sprint notes, “[t]he MAG proponents provide no explanation or justification for having lower SLC caps for non-primary residential lines and multi-line business lines than the current levels for price cap carriers.”¹³ “Just as the rural ILECs’ SLCs need to be increased in a cost-oriented direction, their carrier access charges need to move downward to cost-justified levels in order to ensure that those rates do not contain implicit subsidies that are unavailable to competitive carriers.”¹⁴ However, the MAG Plan provides no support for its \$0.016 CAR, nor does it demonstrate why such a level is more appropriate than the \$0.0095 level set by CALLS for similar rural carriers. Although in theory it may be possible to justify a

¹⁰ AT&T Comments, 10.

¹¹ Qwest Comments, 5.

¹² Sprint Comments, 9.

¹³ *Id.*, 6.

¹⁴ CUSC Comments, 14.

departure from the CALLS levels, “[w]ithout [evidentiary] support it would be difficult, if not impossible, to defend an order adopting the plan.”¹⁵

IV. THE COMMISSION SHOULD REJECT THE MAG PLAN’S PROPOSED REGULATION OF IXC PRICES

As drafted, the MAG Plan requires IXCs to pass through to consumers any savings realized from lower rates as a result of the MAG Plan, and to prohibit IXCs from imposing minimum monthly charges on residential consumers.¹⁶ Numerous commenters believe the Commission should reject the MAG Plan’s proposed regulation of IXC prices,¹⁷ and Excel strongly agrees.

Global Crossing correctly notes that the Commission today does not regulate the rates of non-dominant interexchange carriers in the manner proposed by the MAG proponents.¹⁸ Moreover, there is no reason to believe “that the intensely competitive long-distance industry would not fully flow through access reductions that resulted from the MAG Plan,” if adopted.¹⁹ Particularly given the requirement of section 254(g) of the Communications Act that IXC rates for rural subscribers be no higher than rates for end users in urban areas, IXCs need some discretion and flexibility to determine the best way to pass through cost reductions to their rate-payers.²⁰ Finally, even if the Commission desired to regulate the pricing practices of IXCs, the

¹⁵ Sprint Comments, 4.

¹⁶ NPRM, ¶¶ 13, 23.

¹⁷ *See, e.g.*, AT&T Comments, 20-21; Global Crossing Comments, 9-11; Qwest Comments, 7-8; Sprint Comments, 10.

¹⁸ Global Crossing Comments, 10.

¹⁹ Sprint Comments, 10.

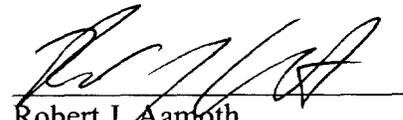
²⁰ 47 U.S.C. § 254(g).

detariffing of interstate retail services – which has already begun for domestic contract tariffs and will continue later this year for domestic mass market tariffs and potentially to international services as well – will make it administratively burdensome for the FCC to engage in such regulations fairly and effectively. While Excel recognizes that AT&T and Sprint made certain commitments regarding long distances pricing as part of the negotiated CALLS plan, those commitments were voluntary and reflected the extent to which those IXC's actively participated in the formulation of the CALLS proposals. As such, that precedent provides no support for the MAG proposal that the Commission impose active rate regulation on all IXC's.

V. CONCLUSION

Consistent with the discussion herein, the Commission should deny the MAG petition and conduct further proceedings to reform the access rates and universal service support for ROR LECs.

Respectfully submitted,



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Dated: March 12, 2001

CERTIFICATE OF SERVICE

I, Theresa A. Baum, hereby certify that on this 12th day of March, 2001, I served copies of Reply Comments of Excel Communications by hand delivery on the following:

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