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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 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

REPLY COMMENTS OF THE ALLIANCE OF INCUMBENT RURAL INDEPENDENT TELEPHONE COMPANIES

Pursuant to the Commission's Notice of Proposed Rulemaking, FCC 00-448, released January 5, 2001 (hereafter referred to as the "MAG Proceeding") and the Commission's Further Notice of Proposed Rulemaking, FCC 01-8, released January 12, 2001 (hereafter referred to as the "RTF USF Proceeding"), the Alliance of Incumbent Rural Independent Telephone Companies (hereafter referred to as "AIRIT") and its individual independent members, by counsel, respectfully submits these Reply Comments.

AIRIT is an ad hoc coalition of more than 90 rural incumbent independent telephone companies which was formed subsequent to the filing of the initial comments on February 26, 2001, in both the MAG Proceeding and the RTF USF Proceeding.[1] The coalition was formed for the

[1] See Attachment A setting forth the names of the companies participating in the AIRIT coalition as of the time of this filing. As discussed herein, the concerns that have resulted in the formation of AIRIT arose subsequent to the filing of initial comments in the MAG and RTF USF

initial specific purpose of: (1) providing its members with an effective and efficient platform from which to respond to new concerns that have arisen as a result of their review and consideration of the comments filed in these proceedings; (2) ensuring that each member has an opportunity to provide the Commission with additional factual information in these proceedings; and (3) ensuring that each member has an opportunity to participate collectively or individually in subsequent review proceedings.

Summary Of AIRIT Member Company Objectives and Positions In These Proceedings:

1. **Each AIRIT Member Company seeks to ensure that its individual right of participation in these proceedings and related rights of review are established and preserved.**
2. **There is no record of facts before the Commission or basis in law upon which to base any decision that would adopt either an altered MAG proposal or an alternative to MAG in the absence of further formal proceedings.**
3. **There is no record of facts before the Commission or basis in law upon which to base any decision that would adopt the RTF USF proposal in the absence of modification to ensure consistency with statutory requirements.**

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proceedings. The coalition has, consequently, been formed within a very short time-frame. As a result of the limited time since the filing of comments on these complex and extremely important matters, it is likely that additional companies may wish to participate in these comments and protect their right to participate individually in these proceeedings. Accordingly, AIRIT respectfully requests the opportunity to supplement its participating coalition member list set forth in Attachment A.

I. Rural Independent Telephone Companies are Individual Carriers with Individual Rights of Participation and Review in These Proceedings.

After reviewing the comments of other parties filed in these proceedings, AIRIT members are concerned that the Commission would entertain any proposal to adopt an altered or amended form of the MAG proposal.[2] In good faith, rural companies have generally endorsed the efforts of their various associations to work together to develop a "holistic" consensus plan for change in access charges, the universal service fund (USF), and subscriber line charges (SLCs). The effort resulted in the MAG proposal, a carefully crafted proposal that both incorporates constructive responses to the concerns of other parties while simultaneously attempting to address the diversity of situations and challenges faced by rural incumbent companies with respect to the continued delivery of universal service in the higher cost to serve rural areas of the nation.

The MAG proposal is pending before the Commission only as a result of a consensus that has been developed and proposed through the extraordinary effort of organizations and individuals representing more than 1000 individual carriers, each of which is subject to an individual set of facts and circumstances and each of which has a right to individual consideration. Notwithstanding their individuality, rural independent telephone companies generally recognize the mutual benefits to the regulator, the regulated, other parties and the public interest that result from effective unified efforts. Successful attempts at building consensus to effect change in access charge structure and levels, USF, and SLCs are not new to either the independent rural telephone company industry or the Commission.[3]

Accordingly, and particularly in light of the Commission's recent success in fostering the

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[2] See, e.g., Comments of AT&T in both the MAG and RTF USF Proceedings.

[3] Examples of consensus building processes can be found in the pre-divestiture/pre-access charge environment in the form of the ENFIA agreements that were reached during the early stages of long distance competition; rural independents also participated in and largely led the first rounds of post-divestiture changes in access charges, USF and SLCs which were termed the "Unity" agreements. More recently, in the context of changes for the Price Cap companies, the Commission encouraged the CALLS consensus.

CALLS consensus, rural independent telephone companies did not approach the concept of developing a consensus proposal for change in access, USF, and SLCs as either foreign or objectionable. In good faith, AIRIT members refrained from advocating individual proposals and generally deferred to the consensus building approach, recognizing that a consensus seldom produces a utopian resolution of an issue for any party. Rural telephone companies participating in this process anticipated that the Commission would either adopt or reject the MAG proposal in its entirety.

Intervening events and circumstances, however, have given rise to a concern that this result may not occur and that individual rural telephone companies must act to protect their rights. While the Commission promoted the notion that the rural independents develop a "holistic" plan addressing access charge structure and levels, USF, and rate of return, the Commission has separated consideration of rural company USF from its consideration of the MAG proposal. As a matter of both policy and existing law, these issues are inextricable.[4]

In addition, AIRIT member companies generally understood that the Commission would apply a process to its consideration of MAG similar to that which it employed in reaching the CALLS decision or "settlement." Some members of AIRIT participated actively within the rural industry efforts to develop the MAG proposal. While they worked arduously toward a consensus, they did not do so with the understanding that they would forego an opportunity to advance alternative proposals and supporting facts before the Commission in the event that MAG was either altered or affected by changes that would result from the adoption of the RTF USF proposal.

The comments of other parties clearly demonstrate the intent of other individual parties and interest groups to utilize the MAG and RTF USF Proceedings as forums to advance their business agendas - as opposed to the public interest - by promoting the adoption of variations to the "holistic" and conditionally interdependent specifics set forth in the MAG proposal. As discussed further below,

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[4] Accordingly, AIRIT is submitting these comments in both the MAG and RTF USF proceedings.

no record of fact or basis in law exists that would sustain the adoption of either the RTF USF proposal (in the absence of modifications to conform with established law and policy) or proposed changes to MAG. Accordingly, the members of the AIRIT coalition are individually asserting their rights to be parties to this proceeding and any subsequent review proceedings.

II. There is No Record of Facts Before the Commission or Basis in Law Upon Which to Base Any Decision that would Adopt Either an Altered MAG Proposal or an Alternative to MAG in the Absence of Additional Formal Proceedings.

Representatives of the rural independent telephone industry have effectively and admirably addressed the intricate and interdependent nature of the specific aspects of the MAG proposal and the delicate balance of various public policy interests that the MAG plan addresses.[5] The MAG proponents have provided the Commission with a record and basis for the adoption of MAG only if it is adopted without alteration and absent the adverse impact that would result from the concurrent adoption of the RTF USF proposal that would alter the determination of how USF is determined and distributed to rural companies.

In the absence of the adoption of a meaningful consensus policy, consistent with Commission past practice, the Commission and other parties cannot avoid the requirement of fully examining the facts and providing the opportunity for the development of a complete record before implementing any change in its existing rules. This requirement is not simply one of "process." It is, rather, a process established to ensure that the interests of all parties and the public interest are fully considered, protected and advanced consistent with applicable law and social policy.

Existing levels of access charges, USF, and SLCs applicable to the operations of rural telephone companies have been established in accordance with the application of the Commission's effective rules. While institutional memory may wane, the black-and-white orders that establish and implement the

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[5] See generally, e.g., Comments of the LEC Multi-Association Group and the Rate of Return Coalition.

existing rules remain both accessible and applicable. In the past, and in conformance with the requirements of due process, the Commission afforded careful consideration to the determination of its rules that define the current calculation of access charges. Absent the adoption of a meaningful consensus proposal or a factual record that supports a change in existing rules, no basis exists to alter the Commission's prior findings and decisions.

Cavalier proposals by individual parties and interest groups, without supporting facts, hardly constitute a record upon which to adopt change. While it is not surprising that interexchange carriers would seek reductions in access charges, there is no factual basis to countenance the suggestion that all rural companies reduce access charges to the level charged by rural price cap companies ($.095/minute), as has been proposed.[6] Similarly, there is no basis to adopt a proposal to require all rural telephone companies to migrate from rate of return regulation to "incentive" regulation.[7]

These and similar self-serving proposals implicitly and improperly suggest a framework for decision making and policy implementation that ignores real facts and circumstances. Any departure from existing rules and policies cannot be undertaken in the absence of an understanding of the policy and factual basis upon which the current rules exist and the impact that is likely to occur as a result of change. Existing access charge levels, USF, and SLCs for rural companies are each aspects of integrated rate design and cost recovery mechanisms with respect to a rural incumbent company's interstate costs, as established pursuant to existing and applicable rules and regulations.

The "alternative" proposal that most clearly illustrates this concern of the members of AIRIT is AT&T's suggestion that rural company SLCs be increased to the level of the CALLS companies and that access charge levels be concomitantly reduced immediately and without adoption of all of the additional aspects of the MAG plan . While this unsustainable proposal would obviously serve AT&T and other interexchange carriers, is there any factual basis to demonstrate that the public interest would

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[6] See Comments of AT&T filed in the MAG proceeding, pages 6-7.

[7] Id., pages 13-14.

be served? What would be the Commission's basis for increasing charges to rural company end users while lowering charges to interexchange carriers? What factual basis exists to depart from existing rules? What will be the impact of the proposed change on rural users and universal service? And if, absent implementation of all aspects of the MAG plan, increases in rural end user SLCs were appropriate, why would these increases first be utilized to reduce access charges rather than offsets to the universal service fund?

AIRIT members have heard the argument that reductions in access charge levels are necessary to ensure that rural customers benefit from "geographically averaged toll rates." The argument is nonsensical and ignores the law. In enacting the Telecommunications Act of 1996, Congress specifically required geographically averaged toll rates. The higher cost of exchange access service in rural areas compared with urban areas is not an impediment to the provision of geographical averaged toll rates. In fact, it is the reality of the higher costs to provide exchange and access service in rural company areas that constituted a principal reason for the inclusion of the statutory requirement of geographically averaged rates.[8]

As addressed by the MAG proposal, access charge levels should not be arbitrarily reduced and SLCs arbitrarily increased in the absence of assurances of benefits for end-user customers. The MAG proposal represents an effort to address and balance each of these concerns. In the absence of the adoption of a consensus proposal, the Commission has no record to justify proposals for decreases in access charge levels, increases in rural subscriber SLCs, and other proposals set forth by individual parties.[9]

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[8] See, § 254(g) of the Telecommunications Act of 1996. In this regard, AIRIT respectfully suggests that the Commission consider and address the need for enforcement with respect to the provision of geographically average toll rates in rural service areas.

[9] Individual AIRIT member companies additionally seek assurance that, even with the adoption of MAG as proposed, the Commission will establish and maintain an expedient process to consider and address individual rural company service area issues (e.g., whether proposed wholesale increases in SLCs may impede the provision of universal service in a specific rural area).

III. There is no record of facts before the Commission or basis in law upon which to base any decision that would adopt the RTF USF proposal in the absence of modification to ensure consistency with statutory requirements.

AIRIT member companies were initially supportive of the RTF USF proposal based upon general reports and analysis. Upon closer review, however, AIRIT member companies and many other parties are justifiably concerned that the RTF USF proposal should not be adopted without significant modification. While there are many commendable aspects incorporated within the RTF proposal (including the recognition of the reality that the provision of universal service in rural company areas is dependent on a meaningful opportunity to recover actual or embedded costs), the RTF USF proposal is not consistent with Section 254 of the Telecommunications Act.

Rural telephone companies apparently were not alone in their initial confusion regarding the potential impact of the RTF USF proposal. An ex parte letter-comment filed by Rural Task Force Chairman William R. Gillis on December 14, 2000, addresses the apparent existence of confusion surrounding the RTF report and clarifies the disturbing aspects of the proposal.

The concerns with the RTF USF proposal have been identified and described by other parties reflecting the interests of the rural incumbent telephone companies.[10] AIRIT members respectfully urge that the Commission recognize that the consensus reached by the rural industry as reflected by the MAG proposal did not contemplate the implementation of the troubling aspects of the RTF USF proposal.

In brief, the most objectionable aspect of the RTF USF proposal is the manner in which USF would be determined for rural areas with more than a single eligible telecommunications carrier (ETC). Under existing policy and rules, USF is an integral part of a regulated framework that provides a rural company with an opportunity to recover its costs which are, in turn, defined pursuant to applicable Commission rules. USF revenues, in accordance with an applicable Commission decision, specifically represent the recovery of total network costs that have been allocated to the interstate jurisdiction.

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[10] See, e.g., Comments of NTCA, John Staurulakis, Inc., and CenturyTel, Inc.

Where more than a single ETC exists in a rural incumbent service area, the RTF USF proposal would convert USF from a network based interstate cost recovery mechanism to a frozen (except for an inflation growth factor) per line "support" mechanism. This aspect of the proposal would result in a pragmatic impossibility for a rural incumbent to have even an opportunity to recover its costs of providing universal service and, thereby, discourage investment in advanced services.

The RTF USF proposal reflects a continued area of confusion that inadvertently may have been perpetuated by the Commission. The confusion surrounds the need to acknowledge the distinct nature of universal service support, as that term is used in Section 254 of the Telecommunications Act, and contrasted with the existing Universal Service Fund which is utilized to recover specifically identified interstate costs of a rural company.

Contrary to popular rhetoric, neither the existing USF for rural companies or access charge levels and structures reflect any "subsidy," either implicit or explicit. The anticipated scoffing at this statement of fact reflects a lack of understanding of the existing rate design and cost recovery rules established by the Commission. The Commission's rules define both a rural company's interstate costs and the recovery of those costs through the application of rate design and cost recovery mechanisms. The establishment of rates and recovery mechanisms to recover interstate costs does not constitute "subsidy."[11]

Accordingly, irrespective of the many commendable aspects of the RTF USF report, implementation of the proposal in the absence of modification is not sustainable. The result of implementation would essentially restrict the opportunity for a rural company to recover network costs that are assigned to the interstate jurisdiction. In turn, this result would produce volatility in the operations of a rural company, reduce certainty and predictability, and discourage investment in advanced services. The results would be contrary to the very specific objectives of Section 254 of the

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[11] AIRIT will request to meet *ex parte* with appropriate members of the Commission's staff to address any remaining confusion and to ensure understanding of this matter and the illogic of a "frozen per line" USF in rural incumbent service areas.

Telecommunications Act. Moreover, in the absence of modification, the RTF USF proposal would produce adverse results that were not contemplated by the MAG proposal, thereby undermining the very foundation of the rural industry consensus that resulted in the MAG Plan. AIRIT respectfully suggests that the Commission should not adopt the RTF USF proposal in the absence of modifications that are consistent with both the Commission's existing rules and Section 254 of the Telecommunications Act.

CONCLUSION

The proponents of the MAG Plan have provided the Commission with a carefully designed plan intended to address comprehensively issues regarding rate of return, access charge structure and levels, USF and SLCs for rural incumbent companies. Concurrently, the Commission is considering the adoption of the RTF USF proposal. The members of AIRIT respectfully submit that no basis exists in fact or law that would sustain either or both the adoption of an altered or amended MAG Plan or the RTF USF proposal (in the absence of significant modification).

The members of AIRIT have joined in these comments and this united effort in order to protect their individual rights of participation in these proceedings and to impress upon the Commission the widespread and justifiable concerns of the rural independent incumbent industry, as discussed herein. In the event that the Commission does not adopt the MAG plan as proposed and does not reject the RTF USF proposal (in the absence of modifications necessary to conform with existing law and policy), AIRIT respectfully suggests that the Commission reject the unfounded proposals of other parties to adopt an altered MAG plan and, instead, institute additional formal proceedings.

Respectfully submitted,

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Bay Springs Telephone Co., Inc.
Bentleyville Communications Corporation
Brindlee Mountain Telephone Co., Inc.
Bulloch Telephone Cooperative
Central Montana Communications, Inc.
Citizens Telephone Company of Hammond, N.Y., Inc
Clear Lake Independent Telephone Company
Coleman Coounty Telephone Cooperative
Colorado Valley Telephone Cooperative, Inc.
Com South Telecommunications, Inc.
Consolidated Telecom.
Copper Valley Telephone Company (Arizona)
Crockett Telephone Co., Inc.
Darien Telephone Company
Daviess Martin County Rural Telephone Corporation d/b/a RTC Communications
Decatur Telephone Co.
The Deerfield Farmers' Telephone Company
Delhi Telephone Company
Delta Telephone Co., Inc.
Egyptian Telephone Cooperative Association
Ellijay Telephone Company
Empire Telephone Corporation
Fail Telecommunications Corporation
Farmers Telephone Cooperative, Inc.
Five Area Telephone Cooperative, Inc.
Flat Rock Telephone Co-operative
Franklin Telephone Co., Inc.
Gearheart Communications, Inc.
Germantown Telephone Company, Inc.
Glenwood Telephone Company
Hancock Telecom
Hardy Telecommunications, Inc.

Heart of Iowa Telecommunications Cooperative
Hopper Telephone LLC
Lackawaxen Telephone Co.
La Harpe Telephone Co., Inc.
Lakeside Telephone Company
Ligonier Telephone Co., Inc.
Lincolnville Telephone Company
Mark Twain Rural Telephone Co.
McDonough Telephone Cooperative
Mid Century Telephone Cooperative
Mid Maine Communications
Mid-Rivers Telephone Cooperative, Inc.
Minnesota Valley Telephone Co., Inc.
Moundville Telephone Company, Inc.
National Telephone Co. of Alabama, Inc.
The Nebraska Central Telephone Company
Nelson Telephone Cooperative
Nemont Telephone Cooperative
New Paris Telephone Co.
Nortex Communications
Northeast Nebraska Telephone Company
The North-Eastern Pa. Telephone Co.
North Pittsburgh Telephone Co.
Ontario Telephone Co.
Otelco Telephone LLC
PBT Telecom, Inc.
Peoples Telephone Co., Inc.
Perry-Spencer Rural Telephone Cooperative, Inc.
Plant Telephone Company
Poka Lambro Telephone Cooperative, Inc.
Progressive Rural Telephone Cooperative, Inc.
Project Telephone Company
Ringgold Telephone Company
Roanoke Telephone Co., Inc.
San Carlos Apache Telecommunications Utility, Inc.
Sledge Telephone Co.
Smithville Telephone Company (Indiana)
Smithville Telephone Company (Mississippi)
Spruce Knob Seneca Rocks Telephone Co.
Stayton Cooperative Telephone Company

Taylor Telephone Cooperative
Tidewater Telephone Company
Tohono O'odham Utility Authority
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Trenton Telephone Company
Triangle Telephone Cooperative Association, Inc.
Trumansburg Telephone Co.
Valley Telecommunications (Montana)
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Ventura Telephone Company
West Side Telephone Company
West Tennessee Telephone Co., Inc.
Wilkes Telephone & Electric Company
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CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Alliance of Incumbent Rural Independent Telephone Companies" was served on this 12th day of March 2001, via hand delivery or by first class, U.S. Mail, postage prepaid to the following parties:

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