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

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Multi-Association (MAG) Plan for)	CC Docket No. 00-256
Regulation of Interstate Services 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)	
)	
Prescribing the Authorized Rate of Return for)	CC Docket No. 98-166
Interstate Services of Local Exchange Carriers)	

**REPLY COMMENTS OF
THE RURAL INDEPENDENT COMPETITIVE ALLIANCE**

The Rural Independent Competitive Alliance ("RICA") files these reply comments in response to the Notice of Proposed Rule Making in the above-captioned docket, FCC 00-448, released January 5, 2001¹ and in response to the issues raised in the Further Notice of Proposed Rulemaking in CC Docket No.96-45, FCC 01-8, released January 12, 2001 in regard to the Joint Board recommendation that the Commission adopt the recommendation of the Rural Task

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

Force.² Because of the substantive overlap of issues of concern to RICA, these reply comments respond to comments filed in both proceedings.

In its comments, RICA addressed how the two proposals affect the means by which rural companies can bring improved service to long neglected rural areas. Specifically, RICA urged that if a rural access support, such as RAS, is created, the amounts removed from NECA rates should continue to be included in any rural CLEC benchmark adopted in the Commission's access charge reform proceeding. RICA also recommended elimination of Section 54.305 and modification of the study area rules to allow rural carriers to freely add lines or exchanges to existing study areas, whether the lines are obtained by purchase or overbuild.

I. Commenters Representing the Telecommunications Industry Overwhelmingly Support Either the Modification or Elimination of Section 54.305 and the Study Area Freeze Rule

Commenters from the industry overwhelmingly supported modification or elimination of Section 54.305 and the study area freeze rule. *See, e.g.*, CenturyTel's RTF Comments at 4 (Section 54.305 is beginning to impede rather than promote the Commission's universal service goals); Innovative Telephone's MAG Comments at 13 (urging elimination of the 54.305 cap); LEC Multi-Association Group's MAG Comments at 29-30 (urging the Commission to eliminate the freeze on study area boundaries for non-price cap carriers and demonstrating that Section 54.305 "effectively discourages non-price cap LECs from acquiring and upgrading inferior telephone plant, contrary to the Act's universal service goals"); Independent Telephone and Telecommunications Alliance's MAG Comments at 2 (current rules regarding acquisitions and

²*In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 01-8 (rel. Jan. 12, 2001).

mergers and study area waivers create uncertainty and delay that “add to the costs of such transactions and disserve customers”); Rate of Return Coalition’s MAG Comments at 5 (supporting the MAG Plans proposed elimination of the freeze on study areas and Section 54.305).

Although AT&T opposes the elimination of Section 54.305 (See AT&T’s MAG Comments at 18-19), it appears to support modification of the current rule.³ Likewise, the Competitive Universal Service Coalition opposes elimination of Section 54.305 but recommends that the Commission adopt the RTF proposal.⁴ In contrast, RICA believes that the RTF Recommendation raises “substantial questions as to the adequacy and implementation of the ‘safety valve’ proposal,” and prefers an approach that more resembles the MAG Plan.⁵ However, if the “safety valve” proposal is adopted, it should apply whether the carrier purchases or overbuilds the area.⁶

³ See AT&T’s RTF Comments at 13 (recommending that the “safety valve” mechanism recommended by the Rural Task Force be “apportioned among eligible carriers on a *pro rata* basis” and that, consistent with Section 54.305 of the Commission’s rules, the “safety valve” support should “transfer to the follow-on carrier if the exchange is subsequently sold”).

⁴ Competitive Universal Service Coalition’s MAG Comments at 19. ASCENT also opposes the MAG Plan’s proposed elimination of Section 54.305 as having an adverse competitive impact. ASCENT’s Comments at 6. However, it is not clear whether ASCENT would oppose any modification of the current rule.

⁵ See RICA’s RTF Comments at 5.

⁶ See NECA’s RTF Comments at 9 (recommending elimination but supporting the “safety valve” mechanism as a “next-best alternative”); TCA’s RTF Comments at 12 (“absent appeal of 47 C.F.R.54.305, the Commission should adopt the RTF’s proposed safety valve mechanism”).

II. Most of the Commenters That Support the Retention of the Current Rules are State Regulatory Authorities with Concerns Regarding the Use of Universal Service Funds

Few commenters support the retention of the current rules. Most of these commenters are state regulatory agencies that have concerns regarding the continued growth of the Universal Service Fund or that contend that the use of USF funds for advanced services is not warranted.⁷ *See, e.g.*, Florida Public Service Commission's MAG Comments at 5 (arguing against elimination of Section 54.305 because the rule has helped to curtail increases in the overall fund size of the Universal Service Fund); California Public Utilities Counsel's RTF Comments at 11-12 (arguing that the RTF (1) "does not provide for a mechanism to verify that the increase in cost is, in fact, due to investment as opposed to a loss of economies of scale as a rural carrier acquires lines previously served by a non-rural carrier" and (2) that "rural LECs may wish to upgrade facilities in newly acquired exchanges in order to provide advanced services which, while desirable to many customers, are not part of the definition of universal service and whose costs are not appropriately recoverable from a universal service fund");⁸ State of New York Department of Public Service's RTF Comments at 8 (arguing that there is no evidence that any specific study area actually lacks adequate infrastructure or the ability to deploy the

⁷ *See also* Quest's MAG Comments at 6 (opposing the MAG Plan as a means of expanding universal service support to advanced services); Verizon's RTF Comments (expressing its concern regarding the growth in the size of the Universal Service fund).

⁸ The California Public Utilities Commission also opposes the MAG Plan to eliminate the merger and acquisition safeguards. *See* California Public Utilities Commission's MAG Comments at 25.

infrastructure).⁹

RICA disagrees with these commenters and asserts, along with many other commenters, that the RTF's proposed implementation of its "no barriers to advanced services policy"¹⁰ is consistent with Section 254(b) principals and will provide significant public benefit by offering substantially improved telecommunications services to previously underserved rural areas.¹¹ RICA members have chosen, in many instances, to overbuild the larger company's exchange rather than seek to purchase the exchange. This overbuilding has required substantial investment. According to data compiled from a recent survey, twenty-three RICA members collectively spent over \$140 million (an average capital investment of \$6.6 million) in their CLEC areas.¹² This investment has resulted in many subscribers receiving for the first time, such

⁹ However, other state regulatory authorities support the RTF recommendation. See Wyoming PUC's RTF Comments at 9 ("wholeheartedly" supporting the adoption of the RTF Recommendation); Public Service Commission of the United States Virgin Islands' RTF Comments at 7 (supporting the universal service mechanism proposed in the Recommended Decision); *see also* Maine Public Utilities Commission and Vermont Public Service Board's Comments at 13 ("[t]he Commission should move at a faster pace than recommended by the Joint Board to target more rural carrier support to higher cost areas").

¹⁰ In line with this policy, the Rural Task Force urges that "customers in high cost rural exchanges involved in the sale/transfer transactions should not be 'doomed' to poor service because they live in exchanges that have been involved in sale/transfer transactions where the previous owner had limited access to universal support funds" and recommends the adoption of its "safety valve mechanism" for Rural Carriers which acquire access lines due to sale or merger. RTF Recommendation at IV(B)(3).

¹¹ *See, e.g.*, Interstate Telcom Group's MAG Comments at 4-5; Innovative Telephone's MAG Comments at 11-13.

¹² At the time of the survey, the twenty-three respondents served a total of 27,923 residential and 11,957 business access lines with the potential to serve an exponentially higher amount of customers in the seventy three different markets that are covered by these RICA members.

services as caller ID, voice mail and DSL as well as improved customer service and job opportunities.¹³ Accordingly, for these public interest reasons, RICA urges that if the Commission adopts the “safety valve” proposal, it should be applicable whether the carrier purchases or overbuilds the area.

¹³ According to the survey, 40 percent of the respondents had brought Caller ID to rural markets for the first time; 65 percent had brought voice mail; and 83 percent had brought DSL. The survey also revealed that 73 percent of the respondents have opened a local customer service office in the markets they are serving. The average penetration rate for the twenty-three respondents is 53.81 percent. Seven of the respondents who have been in business for more than 3 years reported an average penetration rate of 72.14 percent. *See also* CenturyTel’s RTF Comments at 3-4 (estimating that it would invest over \$15 million in the first three years to upgrade facilities serving approximately 85,000 access lines and noting that often, CenturyTel is the first carrier ever to bring rural customers such common services as fiber optic facilities, digital switching, voice mail, caller ID, local dialup Internet access and DSL).

III. Conclusion

Commenters representing the industry overwhelmingly support either elimination of Section 54.305 and the study area freeze rule, as recommended by the MAG Plan, or, in the alternative, modifying the rules. RICA agrees with these commenters and urges the Commission to adopt rules which do not distort the analysis of whether improvements in service to rural areas are more economically accomplished by purchasing exchanges or overbuilding them as a competitive carrier.

Respectfully submitted

Rural Independent Competitive Alliance

By 

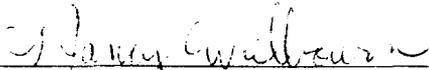
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