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

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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 STATE OF ALASKA

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TABLE OF CONTENTS

Page

Summary ii

The Comments 2

Section 254(g) Of The Communications Act
And The Commission's Implementing Rules 4

Conclusion 10

SUMMARY

In their comments on the MAG plan, several interexchange carriers contended that they are not currently required to offer optional calling plans on a geographically uniform or nondiscriminatory basis. These carriers misstate current statutory and regulatory requirements.

Section 254(g) of the Communications Act, as amended by the Telecommunications Act of 1996, and the Commission's implementing regulations require providers of interexchange services to charge rates in rural areas that are no higher than the rates they charge in urban areas ("geographic rate averaging"). They also require interexchange carriers to charge rates in each state that are no higher than the rates at which services are offered in any other state ("rate integration"). Under those requirements, interexchange carriers may ***not*** discriminate against rural customers by denying them access to the optional calling plans they offer to residents of urban areas. The statute and implementing regulations do **not** permit interexchange carriers to offer ***some*** rates or ***some*** services in rural areas that are higher than the rates offered in urban areas.

Despite the claims of some of the interexchange carriers, the Commission has not forborne from applying these requirements to optional calling plans. The Commission forbore from applying only the geographic rate averaging requirement (and not the rate integration requirement), and its forbearance was strictly limited to optional calling plans that are contained in temporary promotions lasting no longer than 90 days.

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REPLY COMMENTS
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The Multi-Association Group ("MAG") plan proposes that interexchange (long distance) carriers be required to offer consumers in rural and urban areas the same optional calling plans.[1] In their comments on the MAG plan, several interexchange

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1 *See 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, Notice of Proposed Rulemaking, FCC 00-448 at ¶ 13 (rel. Jan. 5, 2001). "Optional calling plans offer customers discounts from basic rate schedules, subject to terms and conditions specified in the optional calling plan." *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the*

(continued...)

carriers contended that they are not currently required to offer optional calling plans throughout the areas they serve on a geographically uniform or nondiscriminatory basis.[2] The State of Alaska ("the State" or "Alaska") submits these reply comments to demonstrate that these carriers misstate current statutory and regulatory requirements.[3] Under those requirements, interexchange carriers may ***not*** discriminate against rural customers by denying them access to the optional calling plans they offer to residents of urban areas.[4]

The Comments

At least three interexchange carriers contend that the Commission cannot, consistent with its current rules and policies, compel them to offer in rural areas the same optional calling plans they offer in urban areas. Sprint, for example, states that the proposal to require interexchange carriers to "offer optional calling plans to rural and urban consumers alike" has "major legal and policy infirmities" and "[r]equiring IXCs to offer optional calling plans indiscriminately would only induce

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Communications Act of 1934, as amended, Report and Order, 11 FCC Rcd. 9564 at ¶ 20 (1996) (*"Geographic Rate Averaging and Rate Integration Order"*). Often those plans offer a lower per minute rate if the customer pays a monthly fee in addition to per minute charges.

2 *See, e.g.*, Comments of Sprint Corporation at 10-12; Comments of Global Crossing North America, Inc. at 9-11; WorldCom Comments at 20.

3 These reply comments are timely filed, pursuant to the notice contained in 66 Fed. Reg. 7725 (Jan. 25, 2001).

4 The State's position here is consistent with the comments filed by the Evans Telephone Company, *et al.*, that the 1996 Act requires interexchange carriers to offer optional calling plans "to all customers on a ubiquitous basis." Comments of Evans Telephone Co., *et al.* at 5.

IXCs to withdraw from offering services" to customers in certain rural areas.[5] Global Crossing argues that the Commission has previously rejected requiring an interexchange carrier to offer optional calling plans throughout its service area and that imposing such a requirement here would harm residents of rural areas by creating a disincentive for interexchange carriers to serve those areas.[6] WorldCom argues that it would be arbitrary and capricious for the Commission to impose a pricing rule on interexchange carriers requiring them to offer the same optional calling plans throughout their service area because the Commission has previously found that competition in the interexchange services marketplace can be relied upon to assure just and reasonable rates.[7]

Interestingly, AT&T appears to take a somewhat different tack. It says that the interexchange pricing rules proposed in the MAG plan are "unnecessary."[8] It says that it "has a number of optional calling plans available to customers in rural areas."[9] AT&T pointedly does not say, however, that ***all*** of its optional calling plans are available to consumers in rural areas.

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5 Comments of Sprint Corporation at 10-12.

6 Comments of Global Crossing North America, Inc. at 9-11.

7 WorldCom Comments at 20.

8 AT&T Comments on MAG NPRM at 20. *See also* Comments of Qwest Communications International Inc. at 8 ("Moreover, to the extent the Commission is concerned that *rural* customers are not the beneficiaries of competition to the same degree as urban customers, Section 254(g) of the Telecommunications Act protects rural customers by requiring that IXC rates for rural subscribers be no higher than rates for subscribers in urban areas.").

9 *Id.* AT&T says the other portions of the MAG-proposed interexchange pricing rule are unnecessary as well. With respect to the portion of the rule

(continued...)

Section 254(g) Of The Communications Act
<u>And The Commission's Implementing Rules</u>

In adopting the Telecommunications Act of 1996, Congress added Section 254(g) to the Nation's laws. That section requires the Commission to adopt rules mandating that providers of interexchange services (1) charge rates in rural areas that are no higher than the rates they charge in urban areas, and (2) charge the same rates in one state that they charge in another. Specifically, Section 254(g) provides:

> Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.[10]

The statute is clear. It does ***not*** permit interexchange carriers to offer ***some*** rates or ***some*** services in rural areas that are higher than the rates offered in urban areas. It says that the rates (plural) charged in rural areas shall be no higher than

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(...continued)

requiring access charge reductions to be flowed through to consumers, it (like the other interexchange carriers) says that competition can be counted on to force carriers to flow through their access charge savings. And with respect to the portion of the rule that would prohibit the imposition of minimum monthly charges on residential consumers, AT&T says that it has already committed to offering such a plan to residential consumers everywhere over the life of the CALLS plan. *Id.*

[10] 47 U.S.C. § 254(g). The pricing requirement in the first sentence of the statute is referred to as geographic rate averaging. The pricing requirement in the second sentence of the statute is referred to as rate integration.

the rates charged in urban areas. The statute on its face, therefore, prohibits an interexchange carrier from charging less for all of its interexchange services in urban areas than it charges in rural areas. Moreover, there is no distinction between "basic plans" and "optional calling plans."

Similarly, the statute says interexchange carriers must offer interexchange services in any one state at rates that are no higher than the rates at which those services are offered in any other state. Therefore, the statute clearly requires interexchange carriers that offer optional calling plans in one state to make those plans available (at the same rates) in each other state they serve. In one of its first actions implementing the 1996 Act, the Commission adopted rules that tracked the legislative language.[11]

The interexchange carriers commenting here appear to agree that the statute and implementing rules on their face would require them to offer the same optional calling plans they offer in urban areas in rural areas (and to do so at the same rates); they do not seek to parse the statutory or regulatory language to show that either means something other than what it says. Instead, the carriers say that in promulgating those rules, the Commission decided to forbear from applying the statutory and regulatory requirement to optional calling plans.[12]

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11 *Geographic Rate Averaging and Rate Integration Order.* The Commission's geographic rate averaging and rate integration rules are codified at 47 C.F.R. § 64.1801.

12 *See, e.g.*, Comments of Global Crossing at 10; Comments of Sprint Corporation at 11.

As is demonstrated below, the interexchange carriers read far more into the Commission's forbearance action than can possibly be justified. The Commission did ***not*** state that optional calling plans need not be offered at the same rates in all areas served by an interexchange carrier (either directly or through an affiliate).

First, the very Commission order on which the interexchange carriers rely provides only a very limited exception to the application of Section 254(g) requirements to optional calling plans. That order granted forbearance from geographic rate averaging requirements to permit interexchange carriers to offer optional calling plans on a geographically limited basis only as part of a temporary promotion.[13]

In granting limited forbearance, the Commission stated that it was applying to all interexchange carriers the then-current policy of permitting AT&T to offer certain contract tariffs, Tariff 12 offerings, optional calling plans and temporary promotions at geographically deaveraged rates subject to certain limitations. It was not giving carriers a *carte blanche* to refrain from offering the same optional calling plans (at the same rates) in urban and rural areas:

> As with current policy, we will require carriers to offer the same basic service package to all customers in their service areas, and permit carriers to offer contract tariffs, Tariff 12 offerings, and optional calling plans provided they are available to all similarly situated customers ***regardless of their geographic location.***[14]

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13 *Geographic Rate Averaging and Rate Integration Order* at ¶ 24. Temporary promotions are those that do not exceed 90 days. *Id.* at ¶ 29.

14 *See Geographic Rate Averaging and Rate Integration Order* at ¶ 27 (emphasis added).

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> Contrary to the claims of some IXCs, we have ***not*** in the past exempted from our geographic rate averaging policy entire groups of services, such as contract tariffs, negotiated arrangements, or ***optional calling plans***, where carriers offer discounted rates on a permanent or long-term basis. ***The record is clear, in fact, that we have required optional calling plans to be generally available throughout a carrier's service area*** . . . .[15]

The Commission explained that this limited forbearance from applying geographic rate averaging would not lead to discriminatory rates for customers in rural and high-cost areas because it was so narrow:

> (1) we will continue to require carriers to make these services generally available under our current rules (*e.g.*, contract tariffs and Tariff 12 offerings must be available to similarly situated customers) regardless of their geographic location, and (2) the only "geographically-specific" discounts that carriers may offer are temporary promotions.[16]

The Commission then clearly stated:

> ***except for temporary promotions and private line services, interexchange telecommunications service offerings will be available on the same terms throughout a carrier's service area.***[17]

Second, neither in that Order nor anywhere else has the Commission forborne from applying rate integration requirements to optional calling plans.[18] In their comments here, the interexchange carriers do not appear to contend to the

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15 *Id.* at ¶ 28 (emphasis added).

16 *Id.* at ¶ 24.

17 *Id.* (emphasis added).

18 *See id.* at ¶¶ 52 – 53.

contrary. Notwithstanding the tacit acknowledgement that the Commission has not forborne from applying rate integration to optional calling plans, the interexchange carriers contend that competition can be relied upon to protect consumers in all states from unjust, unreasonable and discriminatory rates, and no further regulation is necessary. The Commission, however, rejected the argument that competition is sufficient to protect consumers in each state and ensure that consumers in all states receive service at rates that are just, reasonable, and nondiscriminatory.

> We are not persuaded that we must forbear from requiring carriers to comply with rate integration, either generally or in competitive conditions . . . . Our rate integration policy has integrated offshore points into the domestic interstate interexchange rate structure so that the benefits of growing competition for interstate interexchange telecommunications services, as well as regulatory and other developments concerning interstate services, are available throughout our nation.[19]

There can be no question, therefore, that if an interexchange carrier offers an optional calling plan in one state, it must make that same plan available (at the same rates) in each other state it serves. Otherwise, the carrier would be offering service in one state at rates that are higher than the rates at which that service is offered in another state, in violation of Section 254(g) and the Commission's implementing regulation.

Third, in the CALLS proceeding, the Commission confirmed that interexchange carriers must charge consumers in rural and high-cost areas the

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[19] *Id.* at ¶ 52.

same rates they charge to consumers in urban areas, notwithstanding differences in access charges levied by different local exchange carriers. In fact, it specifically found that one of the public interest advantages of the CALLS proposal was that it would lead to lower interstate long distance rates for consumers in areas served by local exchange carriers subject to price-cap regulation, including those serving rural areas. These lower rates would result both from interexchange carriers' elimination of the pass-through of the monthly primary interexchange carrier charge ("PICC") and from the interexchange carriers' pass-through of reduced per minute access charges.

> In addition, the CALLS Proposal will provide rate benefits for rural customers including those not served by price cap LECs. Most IXCs currently assess a flat-rated charge to recover the PICC on all of their subscribers, including those subscribers served by rate-of-return LECs. By eliminating the PICC, we eliminate these charges from the bills of these subscribers as well. This benefit is in addition to the savings they otherwise will experience from the reductions in long-distance charges resulting from the pass through by the long-distance signatories of the proposed lower access charges. Because long-distance providers must offer their geographically-averaged rates to all of their customers, including those served by rate-of-return carriers, rural customers also will benefit from reductions in per-minute rates.[20]

These statements reiterate the requirement that interexchange carriers charge the same rates in urban and rural areas. There is no exception in this language for optional calling plans.[21]

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[20] *Access Charge Reform,* CC Docket No. 96-262, FCC 00-193 at ¶ 88 (rel. May 31, 2000).

[21] AT&T and Sprint "voluntarily" agreed to offer a basic calling plan without a monthly minimum charge to all customers as part of the CALLS proceeding.

(continued...)

Thus, in one limited sense, the State of Alaska agrees with AT&T that a specific new rule requiring interexchange carriers to offer the same optional calling plans (at the same rates) in rural areas that they offer in urban areas is "unnecessary." The Commission has clearly stated that, except for temporary promotions, that requirement already exists.[22]

Conclusion

For these reasons, the State of Alaska believes that the Commission should reiterate that, except for short-term, temporary promotional offerings, optional calling plans offered by interexchange carriers are subject to the statutory

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Id. at ¶ 246-47. This commitment was in addition to the public interest benefits quoted above resulting from the requirement that all interexchange carriers charge the same rates in urban and rural areas.

22 Of course, if the Commission were to conclude that, with the exception of temporary promotions, its current rules do not require interexchange carriers to offer the same optional calling plans (and at the same rates) in urban and rural areas, then the Commission should impose such a rule because it is mandated by Section 254(g).

Because many optional calling plans provide for a monthly minimum fee and these plans must be made available in rural areas, the State disagrees with that portion of the MAG's proposed rule that would prohibit interexchange carriers from offering pricing plans with a minimum monthly charge. Alaska does agree, however, that (1) the "voluntary commitments" made by AT&T and Sprint as part of the CALLS proposal to offer a basic calling plan without a minimum monthly charge – commitments now subject to a Commission order – are in the public interest; (2) these commitments extend to all rural areas (including those served by rural rate-of-return carriers); and (3) all interexchange carriers should be required to offer such a plan. The Commission specifically stated that its decision to adopt the CALLS proposal and to terminate a proceeding inquiring into the interexchange carriers' actions imposing minimum monthly charges was based on the availability of interstate long distance plans that do not impose such charges. *Access Charge Reform, supra* at ¶ 246.

requirements for geographic rate averaging and rate integration. Interexchange carriers must offer in rural areas the optional calling plans they offer in urban areas.

Respectfully submitted,

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