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EX PARTE OR LATE FILED

April 6, 2001

ORIGINAL

Ex Parte

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
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Washington, D.C. 20554

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APR 6 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-45

Dear Ms. Roman Salas:

On April 6, 2001, the attached letter and attachment was sent to Chairman Powell, Commissioners Furchtgott-Roth, Ness and Trsitani on behalf of NRTA, NTCA, OPASTCO and USTA (the Associations).

Pursuant to Commission Rule 1.1206(b)(2), an original and one copy that letter and attachment are being provided to you for inclusion in the public record for the above-referenced proceeding. Please contact me with any questions.

Sincerely,

DAVE

David Cohen  
Vice President Small Company Affairs

cc: Chairman Powell  
Cmr. Furchtgott-Roth  
Cmr. Ness  
Cmr. Tristani  
D. Attwood  
C. Matthey  
J. Jackson  
K. Schroeder  
R. Lerner  
S. Webber

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**APR 6 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

April 6, 2001

Michael K. Powell, Chairman  
Harold Furchtgott-Roth, Commissioner  
Susan Ness, Commissioner  
Gloria Tristani, Commissioner

Federal Communications Commission  
455 12<sup>th</sup> Street, SW  
8<sup>th</sup> Floor  
Washington, DC 20554

Re: CC Docket No. 96-45

Dear Mr. Chairman and Commissioners:

This letter is written on behalf of the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the United States Telecom Association (USTA) (the Associations). The Associations have participated throughout the Joint Board and Commission phases of the proceeding considering the Rural Task Force (RTF) recommendation on universal service reform for rural carriers. We have spent more than two years, at the former Chairman's invitation, developing a comprehensive plan to deal with access charge, incentive regulation, rate of return, separations and universal service issues for the nation's companies subject to interstate rate-of-return regulation. That integrated Multi-Association Group (MAG) plan -- dealing with issues in four pending proceedings -- is now before the Commission and reply comments have been filed.

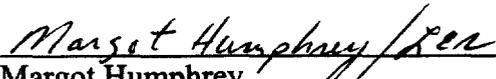
We have been aware throughout the RTF and MAG processes that the RTF universal service recommendations would also be presented to the Commission and could require some coordination with the universal service elements of our comprehensive plan. While we disagree with some elements of the RTF recommendation, we fully support swift action by the Commission on the RTF's recommended universal service issues.

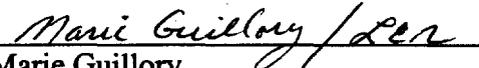
We are nevertheless extremely concerned because of AT&T's current claim that the Commission must resolve access issues when it acts on the RTF universal service recommendation, including a prescription of new end user and carrier access charges. The attached memorandum compellingly demonstrates that neither the RTF nor the Universal Service Joint Board has ever recommended, adopted or agreed to AT&T's proposal calling for prescription of access charges for rate-of-return-regulated carriers in the universal service proceeding. Such unwarranted and premature Commission action would foreclose comprehensive consideration and resolution of the MAG plan issues. Prejudging the MAG

access reform issues and rate levels would also delay or eliminate simultaneous consideration of proposals that rate-of-return companies have proposed only in the context of a balanced and complete reform plan.

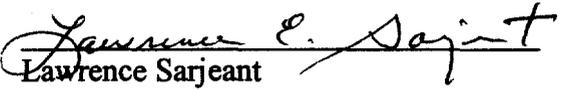
The Associations urgently request that the Commission confine itself to universal service issues and principles in the Joint Board proceeding and reject AT&T's attempt to capture the parts of the MAG plan it likes and sidetrack or jettison the rest of our proposal.

Respectfully submitted,

  
Margot Humphrey  
Holland & Knight  
NRTA

  
Marie Guillory  
Vice President, Legal & Industry  
NTCA

  
Stuart Polikoff  
Regulatory & Legislative Analyst  
OPASTCO

  
Lawrence Sarjeant  
Vice Pres. Reg. Affairs & General Counsel  
USTA

cc: D. Attwood  
C. Matthey  
J. Jackson  
K. Schroeder  
R. Lerner  
S. Webber

**Reasons Not to Prescribe Access Charges  
in the  
RTF/Joint Board Universal Service Proceeding**

The Commission must reject AT&T's eleventh-hour efforts to rewrite unilaterally the unanimous Rural Task Force (RTF) Recommendation. AT&T seeks to broaden the Federal-State Joint Board Universal Service proceeding beyond the RTF and Joint Board recommendation. It demands prescription of specific interstate access charges, on the pretense that the RTF's High Cost Fund III (HCF III) Principles to guide universal service recovery of any implicit support in rural telephone company access charges somehow require access reform in the wrong proceeding. To the contrary, access reform and related issues are "properly before the Commission" in the comprehensive MAG plan proceeding, which has the only record on access charge levels.<sup>1</sup> Sound public policy reasons and fundamental fairness require the Commission to prescribe access reform only in the pending MAG proceeding.

**Rural Task Force Agreement**

The foundation for the Joint Board universal service proceeding<sup>2</sup> is a consensus recommendation from the Rural Task Force. That group had been drawn from diverse parties with an interest in universal service reform by the Federal-State Joint Board on Universal Service and asked to recommend a universal service mechanism for rural carriers. The Joint Board sent the RTF proposal forward to the Commission in its entirety as an interim recommendation. The Commission sought comments and some clarifications of the RTF proposal. Among the elements of the recommendation unanimously adopted by the RTF is a set of "principles" for developing a High Cost Fund III which the RTF considered "in relationship to its role to provide recommendations regarding the federal universal service fund for Rural Carriers."

Reading the words of the RTF principles themselves can leave no doubt that the RTF agreed only to principles for finding and making explicit any implicit support in access charges, not to enlarging the scope of the universal service proceeding so as to include a full-blown access reform and explicit support prescription. The recommended principles expressly state that the RTF members did not agree about when or how to carry out their HCF III principles. For example, the first principle states that "there is no agreement on how much or how to determine the amount of implicit support" contained in current interstate access charges. The second principle plainly anticipates a later proceeding before the Commission, stating that "[w]hen the FCC addresses the interstate access charges for Rural Carriers" --(not an issue the Joint Board would be expected to address in a universal service proceeding) -- the FCC "should identify the appropriate unit

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<sup>1</sup> 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, Notice of Proposed Rulemaking, FCC 00-448 (released January 5, 2001).

<sup>2</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 00J-4 (released December 22, 2000).

prices of interstate access” (emphasis added). That principle goes on to state that the RTF “is not recommending any particular method for arriving at appropriate interstate access prices,” which, of course, it had not been asked to do. The remaining seven principles simply provide further guidance about how to fashion a new HCF III universal service mechanism to replace access support, when the Commission has determined the “difference between current interstate access revenues and the repriced interstate revenues.”

#### Proposed Rules Changes

A group of volunteers from the RTF process, joined by two state commissioners, filed as the Rural Leadership Coalition a set of suggested rule changes to implement the RTF proposal.<sup>3</sup> The group includes an AT&T staff participant in the RTF process. Far from supporting AT&T’s current claim that access rate prescriptions must be implemented at the same time as the more detailed proposals adopted by the RTF, the filing noted that the RTF recommendation recognized “the possibility that the FCC might adopt access reform measures for Rural Non-Price Cap Carriers to remove some amount of implicit support from interstate access rates and make it explicit.” The group went on to “illustrate[] areas of the FCC rules that might need change as a result of such decisions.” With regard to “changes in end user common line charges” and “changes in carrier common line and traffic sensitive rates,” the filing reiterated that such changes had not been recommended specifically, pointing out only that some changes would be needed to the extent that the Commission proposed access changes. There is no suggestion whatsoever that the RTF meant to demand access reform, rate prescriptions and full implementation of the HCF III principles at the same time that the Commission adopted the principles as part of the RTF recommendation.

#### AT&T’s Claim about “Implementing” the RTF Agreement

Given the clarity of the RTF’s statement of what it agreed to recommend and the tentative suggestions that access charge rule changes might become necessary in the event of Commission access reform, it is peculiar that AT&T now claims that specific access charges must be prescribed and implemented in this RTF/Joint Board proceeding. AT&T now presumes that simple adoption of the principles is not enough. For example, AT&T’s comments and replies in the RTF proceeding assert that the HCF III mechanism, and specific access charge reforms, must be “implemented” immediately and with the rest of the RTF package. AT&T declares that:

In this proceeding, the Commission needs to set interstate switched access rates that require rural carriers to recover access costs from end users via higher subscriber line charges and from interexchange carriers ... via lower traffic-sensitive rates, and establish a High-Cost Fund III that would allow rural carriers to recover the residual of their revenue requirements from the USF.

AT&T is incorrect about what the pending recommendation proposes and what the RTF agreed “needs” to be done “in this proceeding.” All that the Commission “needs” to do with regard to HCF III in the RTF proceeding is to adopt the HCF III

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<sup>3</sup> Rural Leadership Coalition – Preserving and Advancing Universal Service in Rural America, Proposed Rules for the joint Board Recommended Decision, Attachment 2 (filed February 15, 2001).

principles, as agreed upon and presented in the RTF recommendation. The Commission must also adopt two important caveats to the RTF's HCF III principles. First, the Commission must recognize that while the principles are guidelines for access charge reform, they are ultimately non-binding on the FCC. Consequently, any decision in an access reform docket must be predicated upon the record in that proceeding. The Commission must also recognize that the HCF III principles are based on a "snapshot" of current market conditions and, consequently, may be less relevant in the future due to changed market conditions. The Associations urge the Commission to adopt the HCF III principles with the above caveats, and no more, as soon as possible.

#### The Joint Board's Recommendation

The Joint Board sent the RTF proposal to the Commission as a package with precisely this expectation. In its recommendation (para. 20), the Joint Board accepts the limits on its jurisdiction. It acknowledged certain overlaps and relationships among the issues in two separate pending proceedings, this one dealing with Joint Board universal service issues and the MAG proceeding dealing with access and several other issues in a comprehensive reform proposal. The Joint Board agreed with the RTF's recommendation that "the Commission should consider creating an explicit universal service support mechanism to replace support that may be implicit within interstate access charges collected by rural carriers." Far from calling for access reform in the universal service proceedings, the Joint Board went on to delineate the separate roles of the pending universal service and broader access reform proceedings and to encourage the Commission to involve the Joint Board in those parts of the comprehensive MAG proceeding related to universal service:

We acknowledge, however, that the access charge issues raised by the Rural Task Force and the MAG are interstate in nature and, therefore, are properly before the Commission. However, the MAG plan raises issues beyond interstate access reform, and proposes universal service policy and procedural changes, including rate comparability under section 254(b)(3) and the overall size of the universal service mechanisms. Section 254(b) and 254(c) of the 1996 Act both contemplate that the Joint Board remain involved in matters related to universal service. We therefore encourage the Commission to ensure the Joint Board remains actively involved in review of those aspects of the MAG plan that relate to universal service (footnotes omitted).

The conclusive evidence in the principles themselves that the RTF did not agree on setting carrier access charges or SLCs and the Joint Board's careful recognition that its jurisdiction and the RTF's involvement do not extend to interstate access reform stand in stark contrast to AT&T's demands for access prescriptions in the RTF decision. In an ex parte visit report signed by Leonard J. Call of AT&T and dated February 26, 2001, Mr. Call reports that, on AT&T's behalf, he "also stated that AT&T supports the Rural Task Force proposal for access charge and universal service reform, and urged that the proposal be adopted and implement together the proposed access and universal service reform by July 1, 2001." AT&T's wishful thinking cannot change the factual record of what the RTF adopted and what the Joint Board did into an RTF access reform proposal, as well as a universal service proceeding.

### No Reason to Delay Decision on the RTF Proposal

Building on its new version of what the RTF agreed to, AT&T has even gone so far as to try to delay the RTF decision if the Commission does not decide access issues and prescribe access rates in the RTF proceeding. Thus, in its reply comments, AT&T demands that "[i]f the Commission is not prepared to implement HCF III on July 1, 2001, however, the Commission should not implement any part of the RTF plan."<sup>4</sup> AT&T is attempting to hold hostage what the RTF and Joint Board have actually recommended – a universal service package that includes a set of principles for universal service recovery of costs when the Commission adopts an access reform plan -- to an access charge prescription proposal expressly disclaimed by the RTF principles. The attempt is unprincipled and wholly at odds with the RTF consensus and the Rural Leadership Coalition filing signed by AT&T representatives.

AT&T seems to believe (1) that the RTF universal service proposal must be adopted as a package, enlarged to include decisions plainly not within the scope of that unanimous agreement, but (2) that the MAG comprehensive proposal should be torn apart to secure the pieces AT&T wants now and orphan the parts that the MAG companies want. Yet the MAG plan is every bit as much a package as the RTF proposal. There is no stand-alone MAG proposal for access charge reform without enforcement of section 254(g) of the 1996 Act, incentive regulation that preserves NECA pooling and resolution of the other open issues that prevent rate of return companies from making sound business and investment decisions that would benefit their customers.

### Conclusion

The Commission should reject AT&T's ploy and (1) adopt the RTF's HCF III principles, with the Association-suggested caveats, as soon as possible as part of a decision on the RTF proposal and (2) act on access reform, applying the HCF III principles, as part of the comprehensive MAG proceeding, as soon as possible, when it is ready to decide all the issues in that proceeding.

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<sup>4</sup> AT&T hinted more subtly at its threat to renege on its own representative's agreement as a Rural Task Force member in its comments. There (p. 2) it warned that if portions of the RTF agreement were "adopted on a piecemeal basis, it would dampen the incentives of parties to continue to support issues on which they had compromised for the sake of supporting the package as a whole.