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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 5, 2001

Ms. Jane E. Jackson
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ms. Katherine Schroder
Chief, Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Written Ex Parte Presentation, CC Docket Nos. 00-256, ~~96-45~~/98-77, 98-166, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*

Dear Ms. Jackson and Ms. Schroder:

The Multi-Association Group (the "Group"), by its counsel, responds to the *ex parte* letter filed by counsel for AT&T, GCI, and Western Wireless on August 28, 2001, in the above-captioned proceeding (the "August 28 letter").[1] The August 28 letter attempts to attack the Group's plan for regulatory reform for the non-price cap incumbent LECs (the "MAG plan") in an effort to shore up the weaknesses of the so-called Rural Consumer Choice ("RCC") plan of AT&T, GCI, and Western Wireless. The Group continues to support the MAG plan as filed. However, this response includes several "second best" suggestions that seek to address constructively some of the specific issues raised in the August 28 letter.

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[1] Letter from John T. Nakahata to Ms. Jane Jackson and Ms. Katherine Schroeder [sic], Common Carrier Bureau, FCC, CC Docket Nos. 96-45, 98-77, 98-166 and 00-256 (Aug. 28, 2001).

Geographic Rate Averaging: The August 28 letter, like the RCC plan itself, fails to mention section 254(g) of the Communications Act, which mandates geographic rate averaging and rate integration, or section 254(b)(3), which adopts rural-urban service and rate comparability as a universal service principle. Although the August 28 letter focuses on linking the prospect for lower access charges with fulfillment of the interexchange carriers' ("IXCs'") obligations in this area, the fact remains that **Section 254(g) is a legal requirement for IXCs independent of access charge levels.** Nor does section 254(b)(3), as a universal service principle, depend on access charge levels.

By adopting the Group's proposed rule 64.1801(c), the Commission would be able to explain with specificity its implementation of sections 254(g) and 254(b)(3), consistent with *Qwest Corp. v. FCC.*[2] The regulatory language proposed by the Group provides the Commission with the tools necessary to enforce these provisions of the Act. Although the August 28 letter invokes the "highly competitive" interexchange market as the means of meeting consumer needs, the record is replete with evidence that optional calling plans are unavailable in many of the service areas of non-price cap LECs.[3] The Commission's experiences with AT&T's proposed rate changes after release of the *CALLS Order* indicate that the IXCs' claims in this area should be viewed skeptically.[4] Indeed, in the course of this proceeding, one interexchange carrier misstated IXCs' obligations to provide optional calling plans.[5]

***COMSAT* Issues:** The August 28 letter invokes the Fifth Circuit's decision in *COMSAT Corp. v. FCC*[6] in urging the Commission not to adopt Path B regulation as proposed in the MAG plan. The Group has estimated that Path B would be selected by non-price cap incumbent LECs with fewer than half the total access lines of all non-price

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2 2001 U.S. App. LEXIS 17044 (10th Cir. 2001).

3 *See, e.g.,* Petition of LEC Multi-Association Group (filed Oct. 20, 2000) at 12-14.

4 *See, e.g.,* Steven Labaton, *Yielding To Embarrassed F.C.C., AT&T Delays Its Rate Increase*, The New York Times (Late Edition Final, Jun. 8, 2000) at A1; *AT&T Promises Savings – Watch Your Wallet*, Communications Today (Jun. 12, 2000).

5 *See* MAG reply comments of the LEC Multi-Association Group at 13, *citing* MAG comments of Sprint at 12-13. All references herein to "MAG reply comments" of a party refer to reply comments filed on or about March 12, 2001 in CC Docket Nos. 00-256 et al. All references hereinafter to "MAG comments" refer to comments filed on or about February 26, 2001 in CC Docket Nos. 00-256 et al.

6 250 F.3d 231 (5th Cir. 2001).

cap LECs[7] – which amounts to less than 4% of U.S. access lines. According to the Interstate Telecom Group:

> Put simply, on a national scale, the interstate access revenues received by the small LECs that might elect Path AB will have no perceptible impact (much less, an adverse impact) upon nationwide interstate long distance toll rates or upon the underlying interstate access costs of interexchange carriers. Hence, whereas retention of the Path B option is critical for the stability and survival of some small rural LECs, it will not have any discernible adverse impact on interstate toll rate or carriers.[8]

Even for this small percentage of access lines, Path B, with modifications reflecting FCC actions since the filing of the MAG plan, goes far toward ensuring that implicit subsidies are made explicit. Path B LECs would be subject to the same SLC increases proposed in the MAG plan for Path A LECs. These increases in flat-rated access charges to recover non-traffic-sensitive ("NTS") costs reduce a major source of implicit subsidy – the use of traffic-sensitive rates to recover NTS costs. To comply with the *COMSAT* decision, the Common Carrier Bureau already has granted NECA a waiver of current Commission rules.[9] The waiver is designed to allow non-price cap LECs to comply with the *COMSAT* decision by permitting these LECs to include in their tariff filings an end-user charge to recover their universal service contributions. This waiver plus the SLC increases proposed in the MAG plan reasonably satisfy the *COMSAT* decision's requirements.

A Transition for Multi-Line Business SLCs: The August 28 letter attempts to justify a flash-cut increase of multi-line business SLCs from their current level of $6.00 to $9.20 by noting that in 1998, the Commission increased multi-line business SLCs for price cap LECs from $6.00 to $9.00.[10] In doing so, the Commission specifically declined to impose that increase on non-price cap LECs because of concerns about its effects on economic development in rural areas.[11] Parties expressed similar concerns in the MAG

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7 *See* Petition for Rulemaking of the LEC Multi-Association Group (filed Oct. 20, 2000) at 5.

8 See MAG reply comments of the Interstate Telecom Group at 7-8.

9 *See Waiver of Sections 69.3(a) and 69.4(d) of the Commission's Rules*, CCB/CPD 01-15, Order (Comm. Car. Bur. rel. June 14, 2001).

10 *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, 12 FCC Rcd 15982 (1997) ("*Price Cap Access Order*").

11 *See id.* at 16015.

proceeding earlier this year[12] – indeed, some parties even oppose the MAG plan's reasonable two-year transition to $9.20 on these grounds.[13] The Commission's previous concern about the negative effects of flash-cutting a multi-line business SLC increase for non-price cap LECs should continue, based on the concerns expressed in the MAG record. Accordingly, the Commission should not now impose a flash-cut multi-line business SLC increase that is even larger than the one imposed on price cap LECs in 1997. The two-year transition to $9.20 that the MAG plan proposes is a reasonable compromise.

Recovery of Common Line Revenue Requirement: The Group has properly noted that compared to price cap LECs, many non-price cap LECs have high common line costs that may not be recovered through SLCs. Apparently conceding this statement's validity, the August 28 letter attacks instead the per-minute Carrier Common Line ("CCL") charge currently used to recover non-price cap LECs' common line costs not otherwise recovered through SLCs, even though the RCC plan itself provides for a transitional CCL charge.[14] The policy concern, of course, is that high-volume access customers would subsidize low-volume customers.

The RCC plan apparently would recover the entire common line revenue requirement in excess of that recovered by SLCs through universal service support. This would be completely arbitrary, since access charges paid by cost-causers should recover the costs associated with access. Rather than relying solely on universal service support to recover common line costs, the Commission should adopt an access charge regime that recovers NTS costs more efficiently than the current CCL charge.

Thus, a far superior alternative to the RCC plan would be for the Commission to impose a flat-rated, per-line Primary Interexchange Carrier Charge ("PICC") on IXCs that purchase access from non-price cap LECs in order to recover NTS common-line costs not recovered through SLCs. There is ample precedent for doing so. The Commission adopted PICCs in 1997 as part of its access charge reforms for price cap LECs,[15] finding that:

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12 *See, e.g.*, MAG reply comments of the LEC Multi-Association Group at 10.

13 *See, e.g.*, MAG comments of the General Services Administration at 7-9; ICORE companies at 14-15.

14 *See Summary of Rural Consumer Choice Plan to Secure Universal Service and Promote Local and Long Distance Choices for Rural America,* attached to Letter from John T. Nakahata to Magalie Roman Salas, FCC, CC Docket Nos. 00-256 et al (filed Jul. 26, 2001).

15 *See Price Cap Access Order*, 12 FCC Rcd at 16019-16026.

> The PICC is not a universal service mechanism, but rather a flat-rated charge that recovers local loop costs in a cost-causative manner.[16]

And multi-line business PICCs are currently in place pursuant to the *CALLS Order*.[17]

By incorporating PICCs into its access charge structure for non-price cap LECs at this time, the Commission would be following a path of access charge reform similar to that of the price cap LECs. As the August 28 letter expressly acknowledges:

> The *1997 Access Reform Order* [i.e., the *Price Cap Access Order*] reduced price cap LEC average usage sensitive charges by increasing the cap on the multiline business SLC, raising the SLC cap for non-primary residential lines, and creating the presubscribed interexchange carrier charges [PICCs]. None of these changes has occurred for non-price cap LECs, and traffic sensitive common line recovery has not been converted to non-traffic sensitive recovery through any other access reform for the non-price cap LECs.[18]

With the inclusion of PICCs as discussed in this letter, the proposals for reform of common line revenue recovery in the MAG plan would include all of the reforms listed above on reasonable timetables.

The Group recognizes the Commission's concern with the effects on end users of IXCs' attempts to recover PICCs. As the CALLS Order noted in 2000:

> Because IXCs have recovered the residential PICCs on a per-account basis, residential customers with only one line pay the same as those with two or more lines, and so pay more than the costs IXCs have incurred for providing them service. In addition, because PICCs are not assessed directly on consumers, but instead are subjected to averaging and mark-ups by the IXCs, consumers are prevented from making head-to-head comparisons among local service providers.[19]

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16 *Id.* at 16025.

17 *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*, 15 FCC Rcd 12962 (2000) ("*CALLS Order*") at 13004-13007. The *CALLS Order* makes provisions for eventually eliminating the multi-line business PICC, but Appendix C to that order shows such PICCs being in place through July 2004.

18 August 28 Letter at note 24.

19 *CALLS Order*, 15 FCC Rcd at 12970.

To the extent that new rules would be necessary to prevent such anti-consumer activities by IXCs, the Group would gladly assist the Commission in devising such rules and enforcing existing requirements.

High-Cost Fund III and Per-Minute Access Charges: The August 28 letter attempts to defend the RCC plan's version of High Cost Fund III ("HCF III") by attacking Rate Averaging Support (the "RAS") as proposed in the MAG plan. In attempting to justify its version of HCF III, the August 28 letter resurrects the IXCs' longstanding argument that the target rate for composite per-minute access charges should be 0.95 cents[20] because that is the target rate for the rural price cap LECs set in the *CALLS Order*.[21] As already demonstrated in the MAG proceeding, however, there is no reasonable basis for equating the operating and economic characteristics of the non-price cap LECs with those of the rural price cap LECs subject to the *CALLS Order*. The rural price cap LECs subject to the 0.95 cents target rate of the CALLS Order have vastly different resources and cost structures than the more than 1000 non-price cap LECs that will be subject to the Plan.[22]

Because the characteristics of non-price cap LECs vary so much from those of the few rural price cap LECs that are subject to the *CALLS Order*, the approach of the MAG plan is a much more realistic way to approach reducing the per-minute access charges of non-price cap LECs. The MAG plan does not seek arbitrarily to force the per-minute rates to those of rural price cap LECs. Rather, a reasonable decrease for Path A LECs would be a percentage reduction in the per-minute switched access rates comparable to that of the *CALLS Order*. As the Plains Rural Independent Companies note, a CAR of 1.6 cents per minute is below the cost of providing access for many small LECs.[23] A reduction to 0.95 cents per minute would represent a percentage reduction much greater than what the *CALLS Order* required for the carriers subject to it. Because NECA's ability to band rates is unchanged under the Plan, CAR rates lower than the 1.6 cents per minute level will be available for lower-cost Path A LECs.

In contrast, the extremely low per-minute access rate proposed in the RCC plan would benefit only the IXCs that purchase access. In doing so, this rate necessarily will

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20 *See, e.g.,* MAG comments of AT&T at 6-7; GCI at 3; Sprint at 5-6; Global Crossing at 7.

21 *See CALLS Order* paras. 142, 177.

22 *See, e.g.,* MAG reply comments of Plains Rural Independent Companies at 5-10 (contrasting the characteristics of small rural non-price cap LECs and rural price cap LECs subject to the *CALLS Order*); John Staurulakis, Inc. at 3 (no basis for concluding that 0.95 cents "is representative of the level of access costs for rural ILECs").

23 *See* MAG comments of Plains Rural Independent Companies at 11-12.

place an additional burden on universal service funding, which is borne by all providers of telecommunications services and their customers.

Transport Interconnection Charge: In discussing the Transport Interconnection Charge ("TIC"), the August 28 letter completely neglects to analyze the function of the TIC and its relationship to the non-price cap LECs. As the Commission has recognized, the TIC largely recovers the high costs of providing transport services in less densely populated, rural areas and related separations issues.[24] The high cost areas at issue are those in which non-price cap LECs operate. To the extent that price cap LECs serve the more heavily populated, low cost areas of the United States, the Commission's treatment of the TIC for those carriers perhaps served to eliminate an implicit subsidy of transport service in high cost areas. But because non-price cap LECs are precisely those incumbent LECs that serve the less densely populated rural areas, the TIC for non-price cap LECs appropriately recovers their high transport costs.

As a means of recovering transport costs already recognized by the Commission, it makes no sense to treat the revenue requirement now recovered by the TIC as part of the common line revenue requirement. It is completely unreasonable to lump a mechanism for recovering transport costs into the common line recovery mechanism. From an administrative perspective, by mandating use of the common line rate structure to recover the TIC, remaining distortions in common line cost recovery will be increased. Nor does it make any sense to recover these transport costs through a universal service mechanism which, by spreading cost recovery among universal service contributors and their end users nationwide, will benefit only IXCs.

Even if it were conceptually reasonable to treat the transport costs recovered by the TIC as common line costs (which it is not), non-price cap LECs are in a different situation than price cap LECs with respect to decreasing the TIC. In the *Price Cap Access Reform Order*, the Commission required price cap LECs to target their price reductions arising from the price cap formula to reducing the residual TIC until its elimination. Such a reduction is not possible for non-price cap LECs, because there no such annual reduction factor applies to them. To the extent that the August 28 letter proposes shifting the TIC to the common line rate structure as a "rough justice" means of performing such reductions, it unreasonably and arbitrarily fails to account for the differences in the TIC between price cap and non-price cap LECs.

Because of these factors, for rate-of-return LECs, the residual TIC should continue to be recovered on a per-minute basis.

General Support Facilities: As the August 28 letter indicates, a significant percentage of non-price cap LECs do not perform their own billing and collection using General Support Facility computers, but rely on outside vendors. Indeed, the record in

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24 *See Price Cap Access Order*, 12 FCC Rcd at 16078-16079.

CC Docket No. 98-77 demonstrates that it is highly questionable whether reallocation of GSF would have any significant effect on the total access charges paid by IXCs.[25] The record also shows that literally hundreds of non-price cap LECs rely on outside vendors for such services.[26] It would be highly burdensome to identify all such LECs and to exempt them from any proposed reallocation, which would seem to be the most rational way to address this issue.

If a reallocation of GSF applied to these LECs, they would be unable to fully recover the costs associated with the reallocation until their contracts with IXCs, including AT&T, are renegotiated. Weighing the benefits and the burdens of the proposed reallocation, the best course for the Commission would be to avoid any such reallocation for the non-price cap LECs. If a reallocation were to occur, however, it should not take place until non-price cap have a transition period in which they may renegotiate their billing contracts to reflect the effects of the reallocation.

A pervasive weakness of the August 28 letter is its persistence in attempting to force-fit onto non-price cap LECs the access charge rules that apply to price cap LECs. The Commission, the Joint Board, and the Rural Task Force have all repeatedly emphasized the differences between the operating conditions and service territories of the price cap LECs and non-price cap LECs. When considering rule changes that specifically affect non-price cap LECs, the Commission should avoid the tendencies of the August 28 letter to treat non-price cap LECs like price cap LECs without carefully considering their differences.

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[25] *See, e.g.,* comments of NRTA/NTCA in CC Docket No. 98-77 (filed Aug. 17, 1998) at 31; reply comments of NRTA/NTCA in CC Docket No. 98-77 (filed Sept. 17, 1998) at 14-15.

[26] *See, e.g.*, reply comments of NRTA/NTCA in CC Docket No. 98-77 (filed Sept. 17, 1998) at 14-15, *citing* comments of USTA in CC Docket No. 98-77 (filed Aug. 17, 1998) at 30 (more than 500 rate of return LECs contract for billing services). *See also* comments of GVNW in CC Docket No. 98-77 (filed Aug. 17, 1998) at 10-14.

As a written ex parte presentation, eight copies of this letter have been submitted to the Secretary pursuant to section 1.1206 of the Rules, and copies have been distributed to the Commission staff listed below. Please do not hesitate to contact me with any questions or comments.

Very truly yours,

William F. Maher, Jr.
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