HARRIS,
WILTSHIRE &
GRANNIS LLP

1200 EIGHTEENTH STREET, NW
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

September 27, 2001

<u>EX PARTE – Via Electronic Filing</u>

Ms. Magalie Roman Salas
Secretary
Federal Communication Commission
The Portals
445 12th Street, SW
Washington, DC 20554

Re: CC Docket Nos. 96-45, 98-77, 98-166 and 00-256

Dear Ms. Salas:

The attached letter was sent to Ms. Jane Jackson and Ms. Katherine Schroder today.

In accordance with FCC rules, a copy of this letter and the attachments are being filed electronically in each of the above-captioned dockets.

Sincerely,

John T. Nakahata
Counsel for AT&T, GCI and Western Wireless

Attachment
c: Kyle Dixon, Legal Advisor to the Chairman
Matthew Brill, Legal Advisor to Commissioner Abernathy
Jordan Goldstein, Senior Legal Advisor to Commissioner Copps
Sam Feder, Legal Advisor to Commissioner Martin
Dorothy Attwood, Chief, Common Carrier Bureau
Carol Mattey, Deputy Chief, Common Carrier Bureau
Rich Lerner, Deputy Chief, Competitive Pricing Division, Common Carrier Bureau
Bill Scher, Attorney, Accounting Policy Division, Common Carrier Bureau

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ATTORNEYS AT LAW

September 27, 2001

Ms. Jane E. Jackson
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communication 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: CC Docket Nos. 96-45, 98-77, 98-166 and 00-256

Dear Ms. Jackson and Ms. Schroder:

On behalf of Western Wireless, GCI and AT&T, sponsors of the Rural Consumer Choice Plan ("RCC Plan sponsors"), I am writing to respond to the *ex parte* letter filed by the Multi-Association Group ("MAG"), through its counsel, dated September 5, 2001 ("September 5 letter") and September 18, 2001 ("September 18 letter"). The September 5 letter provides no principled basis for diverging from the Commission's previous access reforms and universal service orders, as the MAG plan would do. Moreover, the September 5 letter makes clear the extent to which MAG is proposing to maintain unlawful implicit universal service subsidies. Regardless of whether an implicit subsidy is implemented through per minute carrier common line charges or through per line presubscribed interexchange carrier charges, under *COMSAT v. FCC*[1], Section 254(e) precludes maintaining such subsidies. The Rural Consumer Choice Plan ("RCC Plan") is much more consistent with the law, the Commission's prior orders and sound economic principles.

Moreover, in its September 18 letter, MAG now asks the Commission to delay action and to take further comment in this proceeding. There is no need to do so with respect to reform of interstate access charge and the implicit subsidies contained therein. The Commission has already issued an NPRM on non-price cap carrier access reform. The principles established by the Commission and the courts with respect to access and universal service reform are clear, although

[1] 250 F.3d 931 (5th Cir. 2001) ("*Comsat*").

they preclude the Commission from adopting large parts of the MAG plan, including MAG's Track B proposal. Delay will only serve to perpetuate anticompetitive implicit subsidies, harming rural consumers by denying them the benefits that will result from competitive entry accompanied by explicit universal service support. The Fifth Circuit's decision in the *CALLS Order* appeal upheld the aspects of that order directly relevant to the MAG proposal and the RCC Plan.[2] The Tenth Circuit's decision in *Qwest Corp. v. FCC*[3] likewise provides no reason for delay, because it does not address the removal of implicit subsidies from interstate access charges or the provision of explicit support to replace those implicit subsidies. Although the Fifth Circuit's decision in *COMSAT*[4] is directly relevant, as we have previously explained and explain again below, the RCC Plan fully addresses the Fifth Circuit's decision, in a manner consistent with prior Commission decisions. Finally, MAG raises unspecified concerns about the impact of reform on pooling and long term support. The Commission should not accept such vague assertions. Neither MAG nor NECA has specified in the record any problems that the RCC Plan would create for pooling or for long term support.

Geographic Rate Averaging. MAG erroneously asserts that the RCC Plan fails to address geographic rate averaging and rate integration requirements under Section 254(g). To the contrary, the RCC Plan is explicitly designed to support the policies of geographic rate averaging and rate integration embodied in Section 254(g), and to reduce the economic burdens IXCs face when complying with these universal service requirements. The RCC Plan -- unlike MAG's Track B proposal but similar to MAG's Track A proposal -- would provide universal service support for the costs of building, maintaining and operating local traffic sensitive network facilities so that the prices charged to interexchange carriers for use of those facilities to originate and terminate traffic in areas served by non-price cap LECs will be comparable to the prices charged in areas served by price cap LECs. As previously noted, however, we are not proposing that *cost recovery*, as opposed to price, be reduced for the non-price cap LECs.

What the RCC Plan does not include is further detailed rate regulation of long distance services offered in rural areas, as embodied in MAG's proposed rule 64.1801(c). The RCC Plan sponsors do not believe such added rate regulation is necessary, and additional regulation will be even more unnecessary if the Commission lowers the barriers to entry in rural long distance markets that high rural, carrier-paid access charges create. By reducing per minute access charges for all non-price cap LECs through its proposed High Cost Fund III – Local Switching, the RCC Plan improves long distance competition in rural areas, and improves it most dramatically in the areas with the highest local switching costs. As such, High Cost Fund III – Local Switching is a targeted, pro-competitive and deregulatory means of implementing the national policies embodied in Section 254(g). Even the State of Hawaii, a strong proponent of rate averaging and rate integration requirements, does not support MAG's proposed rule 64.1801(c).[5] Moreover, as written, this rule would appear to prohibit IXCs from

[2] *Texas Office of Public Utility Counsel, et al. v FCC*, No. 00-60434, slip op (5th Cir. Sept. 10, 2001), ("*TOPUC II*").
[3] 258 F.3d 1191 (10th Cir. 2001).
[4] 250 F.3d 931 (5th Cir. 2001).
[5] Letter of Bruce A. Olcott, Counsel for the State of Hawaii, to Magalie Roman Salas, Secretary, FCC, filed August 16, 2001, CC Dockets No. 00-256, 96-45, 96-61, 98-77 and 98-166.

providing wireless-type bucket calling plans in rural and high cost areas. It is difficult to imagine a better example of a "burdensome, demand-stifling, innovation sapping regulation."[6]

MAG's true objectives with respect to geographic rate averaging and rate integration requirements are apparent from newly-discovered support for a PICC for non-price cap LECs. For reasons we will discuss further below, implementing a PICC would be profoundly anticompetitive and would cause consumer confusion. MAG now urges that PICCs be instituted with no upper cap on PICC charges: it simply proposes to convert all common line revenue requirement in excess of SLCs into PICCs. However, because the Commission has previously interpreted Section 254(g) to preclude an interexchange carrier from geographically deaveraging PICC pass-through charges, an interexchange carrier will have to charge an averaged PICC recovery fee to all customers, including customers of price cap LECs who just had PICC recovery fees eliminated under the *CALLS Order,* or roll these charges into per minute rates (which IXCs have generally not done). MAG thus seeks to use the PICC as a means to raise rates to customers in areas that do not charge a PICC (including all residential areas served by price cap LECs) or who make a large number of long distance calls, in order to reduce the charges in the non-price cap LEC areas that would be charging a PICC. This meets the definition of an implicit subsidy – "the manipulation of rates for some customers to subsidize affordable rates for others"[7] – and thus cannot be maintained under *COMSAT*.[8] The same holds true for higher local switching charges in areas served by non-price cap LECs: MAG seeks to use geographic toll rate averaging to export recovery of these costs to consumers in areas not served by non-price cap LECs, and thereby to subsidize these traffic sensitive local network costs implicitly, rather than explicitly.[9]

Section 254(g) does not make permissible these implicit subsidies that are otherwise proscribed by Section 254(e). Indeed, it would be perverse to read 254(g)'s requirement of geographic rate averaging and rate integration as superceding 254(e)'s requirement that universal service support be explicit, not implicit. To avoid interpreting two provisions of the Act in a conflicting manner, the Commission should therefore implement these provisions harmoniously. The RCC Plan proposes to do just that -- interexchange carriers would continue to be required to charge geographically averaged and integrated toll rates, but the high costs of providing local network facilities (including both loop and switching) in rural areas are defrayed through explicit and competitively neutral universal service support.

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[6] *Low-Volume Long Distance Users,* 15 FCC Rcd. 6298, 6322 (1999) (Separate Statement of Commissioner Michael K. Powell, concurring).
[7] *Texas Office of Public Utility Counsel v.* FCC, 183 F.3d 393, 406 (5th Cir. 1999) (*"TOPUC I"*).
[8] Throughout the *CALLS Order*, the Commission expressly recognized that the multiline business PICC charge is, for the most part, an implicit subsidy. *See e.g. Access Charge Reform*, 15 FCC Rcd. 12962, 13006 (2000) ("*CALLS Order*") *aff'd in part and rev'd in part sub nom. TOPUC II* ("We recognize that the continue existence of the multi-line business PICC in some areas may constitute an implicit non-portable subsidy.") In deciding to retain the multiline business PICC, the Commission consistently relied upon the fact that the subsidy would be transitional, and the Commission expressly stated that "[a]t the end of the five-year term, we will examine to what extent competition and voluntary reductions have further eliminated it, and to the extent that they have not we will consider additional measures to address those areas." *CALLS Order* at 13006.
[9] *See also* Comments of Qwest Communications International, Inc., *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 34 (filed August 21, 2001) ("[U]nder the access charge regime, [254(g)] creates an implicit and economically inefficient cross-subsidy running from end users in low cost areas to those in high cost areas, because the LECs in the latter areas must impose high access charges on IXCs.").

Thus, the RCC Plan expressly addresses, and provides an economically sustainable, market-oriented basis for the continuation of, the national policies of geographic toll rate averaging and rate integration embodied in Section 254(g). The RCC Plan is the only proposal before the Commission that gives the Commission the opportunity to harmonize its local competition/universal service policy with its toll geographic rate averaging and rate integration policies. It should seize this opportunity to do so. Failure to harmonize Section 254(g)'s policy of geographic rate averaging of toll service with the Act's competition principles will otherwise eventually force the Commission to abandon geographic rate averaging for toll service.

Traffic Sensitive Cost Recovery and High Cost Fund III – Local Switching. The RCC Plan's market-oriented approach to geographic toll rate averaging contrasts sharply with MAG's heavy-handed, innovation stifling regulatory approach. The key component in the RCC Plan's approach to harmonizing geographic rate averaging with competitive markets is its proposed High Cost Fund III – Local Switching.

No party disputes that smaller, more rural LECs with fewer lines served per switch have higher costs. The Rural Task Force ("RTF") found that rural carriers have only 1,254 customers per switch, compared with over 7,000 customers per switch for non-rural carriers.[10] Moreover, as RTF noted, compared with non-rural carriers, rural carriers generally have fewer high-volume users, which further deprives rural carriers of economies of scale.[11] Gross Central Office Equipment Switching Investment per loop is far higher for rural carriers than for non-rural carriers, and "total switching investment per loop increases consistently as the number of lines in the study area gets smaller."[12] Likewise, transport costs are higher in rural areas than in non-rural areas. The question before the Commission is not whether these costs are higher. The question is how these costs are to be spread to telephone consumers outside high cost areas. Congress answered this question when it enacted Section 254(e) and required those costs be spread *explicitly and in a competitively neutral manner* by providing direct support to ILECs and other ETCs to defray those higher switching and transport costs so that the variation in access rates themselves are reduced, and the burden of subsidy is thereby borne by all interstate telecommunications users.

The Rural Task Force recommended a set of principles for High Cost Fund III that provide a basic framework for meeting Section 254(e)'s requirements. The RCC Plan is consistent with these principles. As a preliminary matter, the RCC Plan does *not* reduce total cost recovery for interstate access facilities, including local switches, to *CALLS Order* levels, as MAG alleges. To the contrary, total cost recovery will continue to be determined according to existing rate-of-return regulation methodologies, consistent with the Rural Task Force's Recommendations.[13] Following the Rural Task Force recommended principles, the RCC Plan proposes to set a target *price* for local switching of \$.0025 per minute, with the difference between the target *price* and recoverable costs being paid out of

[10] Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (rel. Sept. 29, 2000) ("*RTF Recommendation*").
[11] *Id.* at 12.
[12] *The Rural Difference*, Rural Task Force White Paper 2 (January 2000), at 49.
[13] HCF III principle 7 ("Once determined, HCF III should be adjusted annually, based on the annual interstate access filings of the Rural Carriers that are rate-of-return regulated."), *RTF Recommendation* at 31.

USF.[14] The $.0025 per minute target price for local switching is calibrated so that when NECA average transport rates are factored in, the total carrier-paid access charge will average $.0095 for carriers in the NECA traffic sensitive pool. This yields total carrier-paid per minute access charges that are comparable to the price cap LECs, without forcing total cost recovery to the levels appropriate for the price cap LECs. Because the most rural price cap LECs have a target average traffic sensitive rate of $.0095, it is rational and non-arbitrary for the Commission to reduce the target price for NECA average traffic sensitive rates to the same level. Moreover, the attached charts demonstrate unless the NECA target price is approximately $.0095, geographic toll rate averaging cannot be sustainably maintained. This provides a second, non-arbitrary basis for selecting a target average traffic sensitive price of $.0095 for NECA. Consistent with the Rural Task Force's recommended principles, this additional USF support would be distributed on a per line basis.[15]

Indeed, as we have previously pointed out, HCF III – Local Switching is very similar to the Rate Averaging Support ("RAS") included in MAG's Track A proposal. MAG, in the September 5 letter, fails at all to explain why the RCC Plan's proposed High Cost Fund III – Local Switching is not substantially similar to MAG Track A's RAS, and therefore justified for the same reasons MAG proposed its RAS. The fact is that these proposals are justifiable for similar reasons, i.e., that high traffic sensitive access rates combined with toll rate averaging requirements create disincentives to entry in markets for long distance services in rural areas. However, by targeting only local switching charges for subsidization, the RCC Plan does not distort transport competition, as would happen with MAG Track A's RAS.

The RCC Plan's High Cost Fund III – Local Switching is also fully justified by the same rationale that underlies universal service support for high cost loops. Section 254 includes as a principle of universal service that "consumers in all regions of the Nation, including...those in rural, insular and high cost areas, should have access to telecommunications...services, including interexchange services...that are reasonably comparable to those services provided in urban areas...."[16] To implement this principle, the Commission included "access to interexchange services" as a supported service.[17] Where local switching costs are so high that access prices would render them not comparable to those charges in urban areas, the price would be subsidized, just as HCF III – Common Line subsidies would be provided to support capping SLC rates below the common line costs per line. Moreover, there is precedent for providing universal service support for switching costs: local switching support provides universal service support for costs that, but for special separations rules, would have been recovered either through local rates or intrastate access charges. Like local switching support, High Cost Fund III – Local Switching would promote universal service by further defraying the high traffic sensitive costs of serving rural areas through targeted universal service support.

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[14] HCF III principles 2-3 ("When the FCC addresses interstate access charges for Rural Carriers, it should identify the appropriate unit prices of interstate access...The difference between current interstate access revenues and the repriced interstate access revenues should be replaced by an un-capped High Cost Fund III.) *Id.*

[15] HCF III principle 3 ("These payments from High Cost Fund III should be distributed on a per line basis.") *Id.*

[16] 47 U.S.C. 254(b)(3).

[17] Report and Order, *In re: Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776, 8818 (1997), *aff'd in part and rev'd in part sub nom. TOPUC I.*

Without HCF III – Local Switching, or something like it, the Commission lacks any means to defray high switching and transport costs in rural areas in a manner that is economically sustainable and consistent with competition. A pure implicit subsidy, which is what results from providing no explicit support but maintaining the geographic rate averaging requirement, is unsustainable for the same reason that implicit subsidies of loop costs are unsustainable – competition will enter to attack the subsidy, removing the source of the subsidy and leaving the subsidy under-funded. There is no economic theory that can make implicit subsidies unsustainable for loop costs – as the Commission has repeatedly found – but sustainable for switching and transport. In addition to being unlawful, any universal service policy that relies of such implicit subsidies is doomed to fail.

Moreover, reliance on implicit subsidies to defray these costs will continue to limit long distance entry and choices in areas served by non-price cap LECs, and provide an artificial competitive advantage to those long distance carriers that choose only to serve urban areas. The attached charts demonstrate that without universal service support for traffic sensitive costs, rate averaging will continue to put nationwide carriers at a substantial competitive disadvantage when compared with carriers serving just areas with low access charges, while making it economically extremely difficult for any carrier to enter and serve high cost areas in competition with a nationwide carrier required to charge averaged rates. Only the RCC Plan with its resulting NECA average traffic sensitive access charge of approximately $.0095/minute will adequately reduce both the rural penalty imposed on nationwide carriers for serving high cost areas, and reduce the substantial barriers to competitive long distance entry created by geographic rate averaging and rate integration.

Continued reliance on implicit subsidy to defray high switching and transport costs is anticompetitive, unlawful, unnecessarily regulatory, and inconsistent with the universal service objective of assuring affordable service to all Americans. The Commission should not ignore the recommendations of the Rural Task Force on this issue.

Transport Interconnection Charges. MAG's response in its September 5 letter artfully dodges the single most important question: what costs associated with specific transport facilities remain in the TIC, other than costs attributable to multiplexers and dedicated trunk ports used in connection with the tandem switch? If MAG's members have complied with existing Commission rules, the answer should be none. Setting aside the costs associated with multiplexers and dedicated trunk ports used in connection with the tandem switch, the only costs that should remain in the TIC at this time are those residual costs that cannot be assigned to specific transport facilities. Conversely, the higher costs of providing longer transport in rural areas, for example, should under existing rules already be fully allocated into the specific transport facilities rate elements.

Once it is determined that the only remaining costs are not attributable to any specific transport facilities, the question becomes how best to recover those costs in compliance with the mandate in *CompTel v. FCC.*[18] As these costs are not associated with specific facilities, they cannot be assigned to a specific facilities purchaser on a cost-causative basis. Accordingly, the *1997 Access Reform Order* shifted recovery of these costs, where possible, to flat-rate IXC paid elements. Only costs that

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[18] 87 F.3d 522, 536 (D.C. Cir. 1996).

could not be shifted directly to PICCs because of PICC caps were spread across all baskets by targeting X-factor reductions to eliminate the non-PICC residual TIC. However, the *CALLS Order* then corrected this artificial inflation of usage-based rates when it eliminated residential and single line business PICC charges, increased end-user paid SLCs, and targeted X-factor reductions that would otherwise have reduced common line prices to reduce switched access charges to target levels. These actions had the effect of re-shifting even the costs that had been previously spread to switching and transport facilities over to common line.[19] Indeed, the *CALLS Order* renamed the common line basket to be the "Common Line, Marketing and TIC" basket.

MAG provides no specific reason why these costs should be recovered in one manner for non-price cap LECs and another manner for price cap LECs. It cites no attribute of relative size that justifies differential treatment for the non-price cap LECs. A Commission determination is not just and reasonable if it "treat[s] similar situations in dissimilar ways." *Garrett v. FCC*, 513 F.2d 1056, 1060 (D.C. Cir. 1975); *see also New Orleans Channel 20 v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987); *Southwestern Bell Tel. Co. v. FCC*, 781 F.3d 209, 216 (D.C. Cir. 1986).

Simply shifting TIC costs uniformly to all other baskets also is not consistent with the combined actions taken in the *1997 Access Order* and the *CALLS Order* for the price cap LECs. As explained above, the *1997 Access Order* by itself did not uniformly increase all other baskets, and the *CALLS Order* largely reshifted TIC costs to common line to the extent they had been previously shifted to local switching or to transport facilities. The Commission cannot now arbitrarily depart from these prior decisions. There is no basis in the record now for treating non-price cap LEC TIC costs differently than the TIC costs of price cap LECs. There is certainly no basis for assigning any portion of the TIC costs to local switching.

General Support Facilities. MAG again asserts that GSF reallocation should not be undertaken because it would be burdensome to do so. The Commission should not accept such bare assertions, especially when the absolute number of LECs and the amount of required reallocation are not necessarily correlated. In particular, it would seem much more likely that the larger non-price cap LECs would be most likely to do their own billing and that, because they have a much larger percentage of the total non-price cap LECs access revenue, a significant portion of the benefit of this reform could be achieved even if smaller carriers are excluded.

Common Line Cost Recovery. Nobody disputes that non-price cap LECs serving rural areas have high loop costs, and therefore high interstate allocated common line costs.[20] Nor does anyone dispute that SLCs, even when increased to the full *CALLS Order* caps, will not recover all common line

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[19] *Access Reform Order*, 12 FCC Rcd. 15982, 16082-83 ("*1997 Access Reform Order*"), *aff'd sub nom., Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998). *CALLS Order*, 15 FCC Rcd. at 12991-92. In the *1997 Access Reform Order*, the Commission expressly addressed the fact that some remaining costs in the TIC may be traffic sensitive, and some may be non-traffic sensitive. The Commission found, however, that it "should err, if at all, on the side of NTS recovery of these costs." *1997 Access Reform Order* at 16082.

[20] For simplicity, we include in our reference to "common line" all common line, marketing and TIC costs that would be recovered through common line charges.

costs for LECs with high loop costs. The question thus is how best to recover these costs when they cannot be recovered from end users because of SLC caps.[21]

MAG asserts that the RCC Plan, which recovers these non-traffic sensitive costs from universal service, would be "arbitrary, since access charges paid by cost-causers should recover the costs associated with access."[22] This argument resurrects the old, unproductive debate about whether the end user or the long distance carrier is the cost causer, without noting that this issue has been settled by the Commission and the courts. In *Southwestern Bell v. FCC*, the Court held, "Simply by requesting telephone service, the subscriber 'causes' local loop costs, whether it uses the service for intrastate or interstate calls.... It is therefore appropriate and rational for the Commission to impose those costs on the end user." *Southwestern Bell v. FCC*, 153 F.3d 523, 557 (8th Cir. 1998), *citing NARUC v. FCC*, 737 F.2d 1095, 1113-14 (D.C. Cir. 1984), *and* First Report and Order, *In the Matter of 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, 16012 (1997)("*1997 Access Reform Order*"); *see also TOPUC II* at 9-14. These decisions clearly establish that it is not arbitrary to recover all costs from the end user and none from the long distance carrier. MAG presents no reason why cost recovery would become "arbitrary" simply by substituting explicit universal service payments for payments by end users, especially when section 254(e) requires universal service subsidies to be explicit.

As noted above, MAG, in its September 25 letter for the first time proposes that common line costs be recovered through a PICC rather than a carrier common line charge or universal service payments. This would repeat history, without learning its lessons. As the Commission stated in the *CALLS Order* when it abolished the residential and single-line business PICC and set a transition to largely eliminate the multiline business PICC:

> "[W]e believe that one of the major benefits of recovering common line costs through the SLC alone is to encourage efficient competitive entry, particularly in providing competing alternatives for loop service....Further, we find that the proposed cost recovery structure will be more apparent to the end user, whereas PICCs currently are at least partially buffered against direct comparison because of the manner in which they are processed from the LEC through the IXC to the end user. Proceeding in this manner will provide greater economic incentives to stimulate alternative sources for the loop through facilities-based competition, and thus subject loop prices to competitive pressure."[23]

If the Commission were now to create PICCs for non-price cap LECs while retaining geographic rate averaging for PICC recovery fees, it would be erecting yet another, unnecessary barrier to facilities-based competition in the non-price cap LEC service areas. While this may be what MAG seeks to do, it is hardly in the public interest.

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[21] MAG does not appear to dispute that for LEC study areas with allocated non-traffic sensitive costs below $6.50 per line per month, those costs should be recovered 100% from the end user. *See TOPUC II*, slip op at 9-14.
[22] September 5 letter at 4.
[23] *CALLS Order* at 12997-98.

The RCC Plan proposes the most straightforward, pro-competitive method for structuring common line recovery. End users pay SLCs up to applicable caps. Common line revenue requirements per line in excess of SLC caps should be paid as a portable, competitively neutral universal service subsidy. The Commission should refuse MAG's pleas for a more protectionistic, non-portable, non-competitively neutral scheme.

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The MAG Plan cannot be justified simply by the fact that non-price cap LECs agreed among themselves to propose that plan. Moreover, MAG now appears to be taking the position that no reform of the existing anticompetitive implicit subsidy system is better than a reform consistent with court decisions and Commission precedent. The Commission should flatly reject such a blatantly protectionistic, pro-monopoly, anti-deregulation position. The Rural Consumer Choice Plan would secure universal service increases served by non-price cap LECs, and it would do so in a manner consistent with the law, the Commission's prior decisions and sound economics. The Commission should adopt all elements of the Rural Consumer Choice Plan without delay.

Sincerely,

John T. Nakahata
Counsel to AT&T, GCI and Western Wireless

Attachment
c: Kyle Dixon, Legal Advisor to the Chairman
Matthew Brill, Legal Advisor to Commissioner Abernathy
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Rich Lerner, Deputy Chief, Competitive Pricing Division, Common Carrier Bureau
Bill Scher, Attorney, Accounting Policy Division, Common Carrier Bureau

Access Rates, Rate Averaging and LD Competition

- Rate averaging without explicit support for high traffic sensitive ("TS") costs places carriers serving both low cost and high cost areas at a significant, artificial cost disadvantage compared to carriers serving only low cost areas.
- Rate averaging without explicit support for high TS costs forecloses LD entry in high cost areas by both regional and national carriers.
- Rate averaging without explicit support will put market pressure on carriers to reduce service in high cost areas, or for the Commission to forbear.

Access Rates, Rate Averaging and LD Competition – Status Quo

Hypothetical Company	Price Cap - Price Cap MOU	Price Cap - NECA MOU	NECA - NECA MOU	Avg Access per Conv. Minute	% of Nationwide Carrier's Access Payments	% of Retail ($.07)
A (Nationwide carrier -- originates/terminates everywhere)	800	100	100	$0.023130	100.00%	33.04%
B (Regional carrier -- originates in non-price cap/terminates everywhere)		50	10	$0.055283	239.01%	78.98%
B' (Regional carrier -- originates in non-price cap/terminates everywhere		20	40	$0.073833	319.21%	105.48%
C (Regional carrier -- originates price cap/terminates everywhere)	400	25		$0.014182	61.32%	20.26%
Access/Conv. Minute	$0.012	$0.049	$0.086			
Access/Access Minute	$0.006	$.006 PC & $.0431 NECA	$0.043			

- Carrier A has substantial market incentives to reduce or eliminate service in high cost areas.
- Carriers B & B’ face severe margin squeeze.
- Carrier C gets a substantial, artificial cost advantage.

Access Rates, Rate Averaging and LD Competition – Common Line & “Catch Up” Reforms Only

Hypothetical Company	Price Cap - Price Cap MOU	Price Cap - NECA MOU	NECA - NECA MOU	Avg Access per Conv. Minute	% of Nationwide Carrier's Access Payments	% of Retail ($.07)
A (Nationwide carrier -- originates/terminates everywhere)	800	100	100	$0.015600	100.00%	22.29%
B (Regional carrier -- originates in non-price cap/terminates everywhere)		50	10	$0.026000	166.67%	37.14%
B' (Regional carrier -- originates in non-price cap/terminates everywhere		20	40	$0.032000	205.13%	45.71%
C (Regional carrier -- originates price cap/terminates everywhere)	400	25		$0.012706	81.45%	18.15%
Access/Conv. Minute	$0.012	$0.024	$0.036			
Access/Access Minute	$0.006	$.006 PC & $.018 NECA	$0.018			

- Carrier A has substantial market incentives to reduce or eliminate service in high cost areas.
- Carriers B & B’ still face severe margin squeeze.
- Carrier C retains a substantial artificial cost advantage.

Access Rates, Rate Averaging and LD Competition – Adding TS Subsidy (RCC)

Hypothetical Company	Price Cap - Price Cap MOU	Price Cap - NECA MOU	NECA - NECA MOU	Avg Access per Conv. Minute	% of Nationwide Carrier's Access Payments	% of Retail ($.07)
A (Nationwide carrier -- originates/terminates everywhere)	800	100	100	$0.013050	100.00%	18.64%
B (Regional carrier -- originates in non-price cap/terminates everywhere)		50	10	$0.016083	123.24%	22.98%
B' (Regional carrier -- originates in non-price cap/terminates everywhere		20	40	$0.017833	136.65%	25.48%
C (Regional carrier -- originates price cap/terminates everywhere)	400	25		$0.012206	93.53%	17.44%
Access/Conv. Minute	$0.012	$0.016	$0.019			
Access/Access Minute	$0.006	$.006 PC & $.0095 NECA	$0.010			

- Carrier A’s cost penalty for serving high cost areas is greatly reduced.
- Carriers B & B’ margin squeeze is greatly reduced.
- Carrier C’s artificial cost advantage is greatly reduced.

Access Rates, Rate Averaging and LD Competition – MAG Track A

Hypothetical Company	Price Cap - Price Cap MOU	Price Cap - NECA MOU	NECA - NECA MOU	Avg Access per Conv. Minute	% of Nationwide Carrier's Access Payments	% of Retail ($.07)
A (Nationwide carrier -- originates/terminates everywhere)	800	100	100	$0.015000	100.00%	21.43%
B (Regional carrier -- originates in non-price cap/terminates everywhere)		50	10	$0.023667	157.78%	33.81%
B' (Regional carrier -- originates in non-price cap/terminates everywhere		20	40	$0.028667	191.11%	40.95%
C (Regional carrier -- originates price cap/terminates everywhere)	400	25		$0.012588	83.92%	17.98%
Access/Conv. Minute	$0.012	$0.022	$0.032			
Access/Access Minute	$0.006	$.006 PC & $.0160 NECA	$0.016			

- MAG Track A recognized TS subsidies are necessary to continue toll averaging.
- MAG Track A is insufficient to reduce Carrier A’s cost penalty, Carriers B & B’ margin squeeze or Carrier C’s artificial cost advantage.