Before the
Federal Communications Commission
Washington, D.C. 20554

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

RURAL CONSUMER CHOICE COALITION PETITION FOR RECONSIDERATION

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I. INTRODUCTION & SUMMARY

The Rural Consumer Choice Coalition ("RCC Coalition"), and its members, AT&T, General Communication, Inc. ("GCI") and Western Wireless, hereby seek a limited reconsideration of the Commission's *MAG Order*.[1] For the most part, the Commission's *MAG Order* was a strong achievement that will both secure universal service and promote competition. In particular, the *MAG Order* reformed interstate recovery of common line and line port costs in a manner consistent with the Commission's longstanding principles of cost causation and the Act's requirement that universal service support be explicit and portable among eligible telecommunications carriers.

The RCC Coalition requests that the Commission reconsider four aspects of the *MAG Order*. *First*, and most significantly, the *Order*'s failure to adopt explicit, portable and competitively neutral universal service support for high interstate switching and transport costs is contrary to statutory requirements, inconsistent with the Commission's other actions to preserve universal service, and will, if left uncorrected, lead to the *de facto*, if not *de jure*, demise of the interexchange rate averaging and rate integration requirements of the Communications Act of 1934, as amended ("Communications Act"). *Second*, the Order's decision to assign Transport Interconnection Charge ("TIC") costs in part to local switching was unsupported in the record and Commission precedent, and will have anti-competitive consequences if left uncorrected. The Commission should also reconsider the "cut-off" date for recomputing the TIC reallocation,

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1 *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304 (rel. Oct. 11, 2001) ("*MAG Order*" or "*Order*").

which unintentionally requires all TIC to be reallocated to transport for some carriers. *Third*, the Order left the information surcharge wholly unaddressed, and on reconsideration it should direct that those costs be assigned to the common line elements for recovery. *Fourth*, the *Order's* failure to adopt cost-causative recovery for retail marketing expenses appears to have been based on an erroneous reading of the Commission's Part 69 and Part 32 rules with respect to marketing expenses.

II. RECONSIDERATION OF THE *ORDER'S* REFUSAL TO PROVIDE EXPLICIT SUPPORT FOR HIGH TRAFFIC-SENSITIVE ACCESS COSTS IS NECESSARY TO PRESERVE THE BENEFITS OF THE STATUTE'S TOLL RATE AVERAGING AND INTEGRATION REQUIREMENTS.

As the Commission recognized, two of the core goals of the 1996 Act were to "establish a 'pro-competitive deregulatory national policy framework' for the United States telecommunications industry," and to implement the "universal service policies embodied" in the Act.[2] The *Order* claims to advance these aims by "creat[ing] a universal support mechanism to replace implicit support in the interstate access charges with explicit support that is portable to all eligible telecommunications carriers."[3]

With respect to the traffic-sensitive costs of local switching and transport, however, the *Order* does no such thing. Rather than "create" an *explicit* "support mechanism" for these costs – as Coalition members urged[4] – the *Order* merely maintained the existing *implicit* subsidy for these costs implemented through toll rate averaging and rate integration. As the Commission itself has acknowledged, however, such implicit subsidies are not sustainable in a competitive marketplace – something has to give. Unless the Commission reconsiders its failure to support

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2 *Order,* ¶ 3.

3 *Id.*

4 *See, e.g.,* AT&T Comments on MAG Plan NPRM (filed Feb.26, 2001), at 6-8 ("AT&T Comments"); Letter of John Nakahata to Jane E. Jackson and Katherine Schroder (filed Aug. 28,

the high traffic-sensitive access costs for rural companies, the Commission is leaving in place marketplace economic forces that will subvert the universal service objectives of the rate averaging and integration policies.

A. Rate Averaging And Rate Integration Are Congressionally Selected Universal Service Policies, Which The Commission Has Found To Be In The Public Interest.

One goal of the 1996 Act's universal service provisions is that "[c]onsumers in all regions of the Nation, including . . . those in rural, insular and high-cost areas, should have access to telecommunications and information services, including interexchange services . . . , that are . . . available at rates that are reasonably comparable to rates charged for similar services in urban areas."[5] To that end, Congress adopted mandatory rate averaging and rate integration in Section 254(g) "in order to ensure that subscribers in rural and high-cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers."[6] Congress thereby enacted the Commission's existing policies on rate averaging and rate integration, which the Commission had previously found "further[ed] our goal of providing a universal nationwide telecommunications network."[7]

In addition, since the passage of the 1996 Act, the Commission has repeatedly found geographic rate averaging and rate integration to be in the public interest and refused to forbear

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2001), at 3-6 ("Aug. 28, 2001 Nakahata Letter"); Letter of John Nakahata to Jane E. Jackson and Katherine Schroder (filed Sept. 27, 2001), at 4-6 ("Sept. 27, 2001 Nakahata Letter").

5 47 U.S.C. § 254(b)(3).

6 Joint Explanatory Statement at 132 (quoted in *Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd. 9564, 9566 (1996) ("*Geographic Rate Averaging Order*") .

7 *Geographic Rate Averaging Order*, 11 FCC Rcd. at 9567 (quoting *In re Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd. 2873, 3132 (1989) ("*AT&T Price Cap Order*")).

from enforcing Section 254(g). In the *Order* itself, the Commission stated "we remain committed to enforcing our long and well-established policy of geographic rate averaging and rate integration."[8] The Commission has refused every request that it forbear from enforcing Section 254(g) with respect to rates other than contract tariffs, temporary promotions and private line services, even when a carrier is facing competition from a regional carrier that may be able to offer lower rates for interexchange services because of lower regional access charges.[9]

B. Increasing Competition In The Urban Interexchange Markets Means That Rural Rates Can Only Be Made Comparable To Urban Rates Through Explicit Support, Not Through Mandated Implicit Support.

Marketplace economics dictate that Section 254's goal of ensuring that rural interexchange rates are comparable to urban rates cannot be accomplished through regulatory fiat in the absence of explicit support for rate-of-return LECs' high traffic-sensitive access costs. Contrary to what the *Order* appears to assume, reducing rate-of-return LECs' access rates to cost will not *alone* ensure comparable rates because those rates will remain, on average, over three times higher than the rates charged by the predominantly urban price cap LECs.[10] Carriers

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8 *Order*, ¶ 182.

9 *Geographic Rate Averaging Order* at 9582-83. In addition, the Commission has refused to forbear from enforcing 254(g) with respect to long distance carrier recovery of presubscribed interexchange carrier charges. *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, 16022 (1997) ("*1997 Access Charge Reform Order*"). Similarly, the Commission has refused to forbear from enforcing 254(g) with respect to CMRS providers. *See Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, Report and Order, 11 FCC Rcd. 9564 (1996); First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 11812; Order, 12 FCC Rcd. 15739 (1997); and Memorandum Opinion and Order, 14 FCC Rcd. 391 (1998), *vacated and remanded*, *GTE Service Corp. v. FCC*, 224 F.3d 768 (D.C. Cir. 2000). Notably, however, as a result of the *GTE* decision, there is no existing requirement that CMRS providers implement Section 254(g). *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communication Act of 1934, as Amended*, Memorandum Opinion and Order, 15 FCC Rcd. 21, 066 (2000).

10 *See* Exhibit A, attached (illustrating the difference between NECA traffic sensitive rates and the traffic sensitive rates for major price cap LECs).

originating traffic only in areas served by price cap LECs will continue to be able to offer toll rates below those charged by carriers originating traffic in the rate-of-return LECs' areas because of the difference in underlying exchange access costs.

Even a cursory review of interexchange offerings shows that these regional carriers are in fact geographically targeting their offerings to exploit this advantage. For example, of carriers listed on one Internet website, two of the carriers with the lowest rates expressly limit their offerings only to areas served by RBOCs.[11] Moreover, carriers other than AT&T, WorldCom, and Sprint have grown significantly and represent an increasingly large portion of the long distance market.[12] And as the RBOCs enter long distance, they represent additional regional companies focused primarily on serving customers in their local service areas – which are the low access charge areas.

The charts attached at Exhibit C demonstrate (using traffic balances for hypothetical illustrative carriers) why it is generally not possible for carriers that must pay high access costs in rate-of-return areas to offer plans at the levels offered by carriers that originate traffic only in price cap LEC service areas.[13] Even when the *Order*'s provisions moving rate-of-return access rates closer to cost are taken into account, the carrier serving the non-price cap LEC areas will

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11 *See* Exhibit B, LD.net, http://ld.net/1plus/?cogbiz (offerings of Unitel and OPEX). In addition, Capsule Communications, also listed on this website, limits its service to RBOC service areas.

12 In the year 2000, long distance carriers (not including the RBOCs) other than AT&T, WorldCom and Sprint served nearly as many *residential* customers as WorldCom and Sprint combined. *See Trends in Telephone Service*, Common Carrier Bureau (August, 2001), Table 10.10, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend801.pdf. Moreover, these carriers' share of the toll market has more than doubled since 1995. *Id.* at Table 10.8.

13 *See* Exhibit C, Charts of: (1) "Access Rates, Rate Averaging, and Long Distance Competition – Pre-*MAG Order*"; (2) "Access Rates, Rate Averaging, and Long Distance Competition – *MAG Order"*; and (3) "Access Rates, Rate Averaging, and Long Distance Competition – *MAG Order* & TS Support". Initial versions of these exhibits reflecting the RCC Plan were filed with the Commission as attachments to the Aug. 28, 2001 Nakahata Letter.

face a substantial competitive disadvantage.[14] Only when traffic-sensitive support is provided to reduce the total access charge to approximately $.0095 per minute do the average access costs for carriers originating traffic in rate-of-return LEC territories approach the average access costs for carriers originating traffic only in price cap LEC territories.[15] This evidence was provided to the Commission prior to the *Order*'s release,[16] but the *Order* wholly ignores it without any explanation.

These charts show that the *Order* correctly concludes that "higher [rural access] rates and implicit subsidies may discourage . . . long distance competition in rural areas and limit consumer choice."[17] Even in Exhibit C(2), which illustrates the situation after full implementation of the *MAG Order*, nationwide carriers face much higher average access costs than these regional competitors because they serve the high-cost rate-of-return LEC areas. As traffic originating in low-cost areas migrates from the nationwide carriers to the low access cost regional carriers – as will occur unless the nationwide carrier is significantly more efficient than the low access cost regional carrier – that differential will only increase. This verifies what economics predicts: the competitive market undercuts the implicit subsidy in the subsidizing market. Unless rates are represcribed, this cycle can be broken only by providing explicit support for high traffic-sensitive costs.

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14 *See* Exhibit C(2). These charts actually understate the access charge disparities because they assume that the non-access costs of serving price cap LEC areas (such as transport between points of presence and LEC billing fees) are the same as serving rate-of-return LEC areas, when, in fact, those costs are often also higher with respect to the rate-of-return LEC areas.

15 *See* Exhibit C(3).

16 *See* Aug. 28, 2001 Nakahata Letter (describing the need for a subsidy for traffic sensitive access charges); Sept. 27, 2001 Nakahata Letter (charts included as attachments); Letter from John Nakahata to Magalie Roman Salas (filed Oct. 3, 2001) (charts included as attachments); Letter from John Nakahata to Magalie Roman Salas (filed Oct. 4, 2001) (charts included as attachments).

17 *Order*, ¶ 6.

In addition, entry into the high-cost markets – the markets implicitly subsidized by toll averaging – is deterred. As these charts show, a carrier that serves predominantly price cap LEC territories would increase its costs relative to its competitors if it expanded service to rate-of-return LEC territories. Moreover, new carriers that enter only in primarily rate-of-return areas face a formidable competitive disadvantage because nationwide competitors' rates are forced by regulation to levels that do not reflect the high access-costs associated with originating traffic in those rate-of-return areas. Given these economics, it is not surprising that rural, rate-of-return LEC areas have fewer long distance choices than urban, price-cap LEC markets. Again, unless rates are represcribed, this deterrent to entry can only be eliminated with explicit support for high traffic-sensitive costs.

This analysis – that subsidization of rates requires explicit subsidies in a competitive environment and that implicit subsidies both deter entry in high-cost areas and cannot be sustained in low-cost areas – is hardly new. Indeed, Congress recognized as much in enacting Section 254 and requiring that subsidies be explicit. In the *Order* itself, the Commission acted on this basis when it converted implicit common line subsidies to explicit support.[18] The economics of subsidization in competitive markets do not vary between loop and switch/transport, and even the *Order* does not assert otherwise.

Notably, the record reflects substantial consensus among the underlying Rural Task Force's recommendation, the MAG Track A proposal, and the RCC Plan that the policies of Section 254(g) are unsustainable without explicit support. In its recommendations, the Rural Task Force stated that explicit support "is needed, in part, to respond to a disparity of access

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[18] *Order*, ¶ 62 (noting that the implicit subsidy in the CCL charge "is not sustainable in a competitive environment because . . . 'high-volume customers [will] migrate to a competitive LEC,'" thus undercutting the subsidy) (quoting *1997 Access Charge Reform Order*, 12 FCC Rcd. at 16008; *see also Access Charge Reform,* Sixth Report and Order, 15 FCC Rcd. 12962, 13041 (2000) ("*CALLS Order*")).

rates between Rural Carriers and non-Rural Carriers."[19] Without such support, the Task Force explained, carriers would face "significant pressures . . . to geographically deaverage toll rates."[20] MAG similarly had stated, "In high cost markets, like many rural areas, long distance carriers have strong incentives not to serve consumers due to higher access rates."[21] Indeed, MAG touted as one of the consumer benefits of Track A of its plan that "by lowering access charges, the Plan makes it much easier for long distance companies to comply with the law. This will give consumers more carriers and calling plans to choose from."[22] Although there was dispute in the record concerning the magnitude of explicit universal service support necessary, both the MAG Plan and the RCC Plan agreed that support was necessary to reduce charges below embedded cost levels in order to sustain Section 254(g).

The additional subsidy necessary to support local switching and transport costs will not lead to unaffordable rates. The RCC Coalition estimates that the incremental support required to support local switching so that NECA traffic-sensitive rates average $.0095/minute would be approximately $300-350 million – less if the Commission grants the RCC Coalition's petitions

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[19] *See* Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (filed Sept. 29, 2000), at 30 ("*RTF Recommendation*").

[20] *Id.* at 31.

[21] Petition for Rulemaking of the Multi-Association Group, Exhibit I and I-17 (filed Oct. 20, 2000), quoted in Aug. 28, 2001 Nakahata Letter at 4. In addition, in their 1998 Reply Comments in CC Docket No. 98-77, the National Rural Telephone Association and the National Telephone Cooperative Association stated: "Using a federal universal service mechanism [to reduce high rural access rates] would be manifestly appropriate, since the geographic rate averaging requirement is imposed as a component of the Act's universal service provision." Reply Comments of National Rural Telecommunications Association and National Telephone Cooperative Association at 23 (filed Sept. 17, 1998), quoted in Aug. 28, 2001 Nakahata Letter at n.22.

[22] "Consumer Benefits Multi-Association Group Plan," available at http://www.usta.org/mag_consumer_benefits.html, quoted in Aug. 28, 2001 Nakahata Letter at 4.

for reconsideration with respect to the TIC and marketing.[23]. This represents only about a 37-43 basis point (.37-.43%) increase in the contribution factor.[24]

Although the *Order* "recognize[d] that rate disparities may create pressure on interexchange carriers to deaverage long distance toll rates," it turned a blind eye to these economics.[25] Unless the Commission represcribes rate-of-return carrier access rates, there is no way to achieve Congress' universal service goals of comparable urban and rural interexchange rates other than to provide explicit universal service support for what the Commission acknowledges are the higher costs of local switching and transport in rate-of-return LEC areas. For these reasons alone, the Commission should reconsider its refusal to provide explicit universal service support for high traffic-sensitive access costs in areas served by rate-of-return LECs.

C. $.0095 Per Minute Is An Appropriate Target Price For NECA Traffic-Sensitive Access Rates.

As proposed in the RCC Plan, $.0095 per minute is an appropriate target price for NECA traffic-sensitive access rates. The RCC Plan proposed to implement a $.0095 target price for NECA rates by reducing the target price for local switching, a rate element which both varies substantially among NECA switching bands and which is paid by all carriers using switched access services. This subsidy structure would not distort competition in transport between special access, expanded interconnection switched transport, and switched transport.

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23 These estimates assume that the Commission shifts recovery of the information surcharge to common line elements.

24 Total interstate and international end-user telecommunication revenues for the third quarter of 2001, less the uncollectibles, were $20.245789 billion. *Proposed First Quarter 2002 Universal Service Contribution Factor,* Public Notice, CC Docket 96-45 (DA-01-2823, rel. Dec. 7, 2001).

25 *Order*, ¶ 88.

As the Commission recognized in the *Order*, \$.0095/minute is the target price for the most rural price cap LECs with the lowest teledensity. The costs for rate-of-return LECs may, as the *Order* suggests, be even *higher* than for these price cap LECs (although the Commission lacked specific evidence that this was true), but higher costs only increase the need for support to ensure *comparable* access costs and therefore interexchange rates. Exhibit C further independently demonstrates that access costs, and therefore toll rates, will not be comparable between urban and rural areas unless the rate-of-return LECs access price is reduced at least to \$.0095. Setting \$.0095 as the target price for NECA ensures that this will be the target price for the highest cost LECs, which are generally in the NECA traffic-sensitive pool, and will limit the access cost disparity between rural and urban areas to the range of prices for the price cap LECs.[26]

D. The Effect Of The Commission's Refusal To Provide Explicit Support For High Traffic-Sensitive Access Costs Will Be To Frustrate Congress' Universal Service Goals In Adopting Toll Rate Averaging And Integration.

The same marketplace economics that make explicit support for high traffic-sensitive costs necessary to ensure comparable interexchange rates between rural and urban areas will – absent explicit support – inevitably frustrate the congressional policies of toll rate averaging and rate integration requirements. As rational economic actors, carriers will be obliged to respond to the competitive problems posed by the combination of implicit subsidies for traffic-sensitive costs and ever-increasing competition in the market for interexchange telecommunications services. Market pressure to do so will only continue to accelerate as RBOCs further enter long distance around the country.

[26] As we repeatedly pointed out, this proposal would result in a revenue neutral shift of cost recovery from traffic sensitive access rates to universal service, and does not reduce cost recovery.

The most rational economic response would be for carriers to divide into separate, unaffiliated companies – those originating traffic in price cap regions and those originating traffic in non-price cap regions. In this manner, each unaffiliated company could comply fully with toll averaging and rate integration requirements. However, even though rates would be fully averaged and integrated with respect to the providing companies, rates in rural areas would be significantly above rates in urban areas because those rates would be charged by different, unaffiliated companies.

Accordingly, the Commission should not persist in requiring rate averaging without providing explicit support. If the Commission continues to believe that Section 254(g) is in the public interest and serves universal service objectives, then as a matter of sound economics and, as explained further below, as a matter of law, it must provide the explicit universal service support necessary to do so. If rate averaging and rate integration are no longer necessary to meet universal service objectives, then the Commission should forbear from enforcing Section 254(g).[27]

III. THE *ORDER*'S REFUSAL TO MAKE SUPPORT FOR THE TRAFFIC-SENSITIVE COSTS OF PROVIDING UNIVERSAL SERVICE EXPLICIT WAS ARBITRARY, CAPRICIOUS AND CONTRARY TO LAW.

The Commission's failure to provide explicit support for the traffic-sensitive costs of local switching is not only poor policy, but is also arbitrary, capricious and contrary to law in several important respects. First, the Commission's decision to continue to rely on implicit subsidies to support traffic-sensitive local network costs violates Section 254(e) of the Communications Act, which requires that all such support be explicit. Second, the *Order*'s failure to address – or even acknowledge – unrebutted record evidence demonstrating that the

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[27] The RCC Coalition is not requesting in this petition that the Commission forbear from enforcing section 254(g).

failure to provide an explicit subsidy for switching costs will result in significant competitive disincentives for toll carriers to enter and serve rural areas ignored the Commission's responsibility to engage in reasoned decisionmaking. Finally, the Commission's half-hearted attempt to justify rejecting traffic-sensitive support on the grounds that it is not cost-based was also arbitrary and illogical.

A. Section 254(e) Precludes The Commission From Relying On Implicit Subsidies Implemented Through High Access Charges And Toll Rate Integration To Support Services Designated For Universal Service Support.

The Commission's refusal to adopt explicit support for traffic-sensitive costs was not only unreasoned, but also flatly contrary to statute. Section 254(e) mandates that "[a]ny [universal service] support should be explicit and sufficient to achieve the purposes of this section."[28] As the Fifth Circuit recently confirmed in *COMSAT Corp. v. FCC*, this provision "makes it clear that the 'FCC cannot maintain any implicit . . . subsidies,' whether on a permissive or mandatory basis," for any services supported by universal service mechanisms.[29]

Access to interexchange services is clearly a supported service, and it includes all costs of using the local network to access interexchange services.[30] The Commission, for example, has previously provided universal service support for switching costs irrespective of whether those costs were for switching local traffic or interexchange traffic: local switching support provided pursuant to 47 C.F.R. § 54.301 supports costs that, but for special separations rules, would have been recovered either through local rates or intrastate access charges, without distinction.

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[28] 47 U.S.C. § 254(e).

[29] *COMSAT v. FCC*, 250 F.3d 931, 939 (5th Cir. 2001) ("*Comsat*") (quoting *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC I*")).

[30] 47 C.F.R. § 54.101(7). *See also CALLS Order*, 15 FCC Rcd. at 13001 ("[i]nterexchange access is a supported service as defined in the Universal Service First Report and Order.")

Because access to interexchange services is a supported service, and Section 254(e) bars the FCC from maintaining implicit subsidies for any supported service, the Commission's failure to provide an explicit subsidy for traffic-sensitive local network costs violates the statute. The *Order*, however, largely ignored this argument which was made by RCC Coalition members.[31] The closest the *Order* comes to addressing it is the oblique claim – in the section addressing local switching and transport issues – that "[i]t is unclear whether section 254, read as a whole, directs the Commission to make explicit the support for toll rate averaging and rate integration provided for under section 254(g)."[32]

If, indeed, this is meant to be a response to the Coalition members' argument that maintaining implicit subsidies for traffic-sensitive costs of local switching violates Section 254(e), it is a patently inadequate one. First, it simply does not grapple with either the plain text of Section 254(e), or the Fifth Circuit's straightforward construction of that text in *TOPUC I* and *COMSAT*. Second, it does not even attempt to explain how Section 254(g)'s geographic rate averaging and rate integration requirements could, by implication, authorize the same implicit subsidies that Section 254(e) expressly forbids. In fact, of course, Section 254(g) does no such thing – Sections 254(e) and (g) should be read together to require that interexchange carriers continue to charge averaged and integrated toll rates, and the high costs of local switching and transport in rural areas must be defrayed by explicit and competitively neutral universal service support.[33]

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31 *See, e.g.,* Aug. 28, 2001 Nakahata Letter; Sept. 27, 2001 Nakahata Letter.

32 *Order*, ¶ 89.

33 Sept. 27, 2001 Nakahata Letter at 3.

B. The Commission Arbitrarily And Capriciously Ignored Record Evidence Demonstrating That Rate Reallocations and Common-Line Support Are Insufficient to Mitigate Competitive Disincentives For Toll Carriers To Enter And Serve Rural Areas.

As noted in Section II.B, *supra*, RCC Coalition members submitted detailed evidence demonstrating that without explicit support for traffic-sensitive local network costs, the half-measures adopted by the *Order* will not alleviate existing disincentives for toll carriers to enter and serve rural areas. In particular, in a series of *ex parte* letters circulated from September 27 to October 4, 2001, the RCC Coalition provided and discussed several charts analyzing the incentive effects of access rates on competition in the long distance market under the *status quo*, with common line and "catch up" reforms only, and with the traffic-sensitive cost subsidy advocated by Coalition members.[34] Those charts vividly illustrate that rate reallocations and the creation of interstate common line support are insufficient to mitigate the competitive disincentives to provide rural toll service.[35]

Significantly, the *Order* did not even try to contradict this evidence – it simply ignored it. Particularly given the Commission's stated goal of "creat[ing] a universal support mechanism to replace implicit support in the interstate access charges with explicit support that is portable to all eligible telecommunications carriers,"[36] its failure to address (or even acknowledge) the Coalition members' arguments was arbitrary and capricious. An agency must "articulate a satisfactory explanation for its action," taking into account all "the relevant factors,"[37] "consider

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34 *See e.g.,* Charts entitled: (1) "Access Rates, Rate Averaging, and Long Distance Competition – Status Quo"; (2) "Access Rates, Rate Averaging, and Long Distance Competition – Common Line and 'Catch Up' Reforms Only"; and (3) "Access Rates, Rate Averaging, and Long Distance Competition – Adding TS Subsidy (RCC)," attached to Sept. 27, 2001 Nakahata Letter.

35 Sept. 27, 2001 Nakahata Letter at 9.

36 *Order*, ¶ 3.

37 *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

reasonable alternatives to [the agency's] chosen policy and . . . give a reasoned explanation for its rejection of such alternatives,"[38] and respond to *all* significant comments.[39] The *Order's* failure to observe these obligations constituted a failure of reasoned decisionmaking.

C. The Commission's Attempt To Justify Rejecting Traffic-Sensitive Support On The Grounds That It Is Not Cost-Based Is Arbitrary And Illogical.

In the *Order*, the Commission makes little effort to justify its failure to make explicit the subsidy for traffic-sensitive costs of providing universal service. The *Order's* lone attempt, however, is both irrational and inconsistent with the actions taken by the Commission elsewhere in the *Order*.

Specifically, the *Order* rejects the target rates for traffic-sensitive costs suggested by both MAG and the RCC Coalition members on the ground that those rates were "inadequately supported by cost data," and inconsistent "with the principle of cost-based access pricing."[40] That reasoning simply makes no sense. No party disputed that smaller, more rural LECs with fewer lines served per switch have higher switching costs per customer than non-rural carriers.[41] The only question confronting the Commission was *how* those costs are to be spread to other telecommunications consumers – through an *implicit* subsidy, or an *explicit* one.[42] Either way, the very purpose of the subsidy is to have the rural consumer bear less than the full, high access costs that would otherwise increase rural interexchange rates.

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38 *See City of Brookings Municipal Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) (quoting *Farmers Union Central Exchange, Inc. v. FERC*, 734 F.2d 1486, 1511 (D.C. Cir. 1984).

39 *See, e.g., American Civil Liberties Union v. FCC*, 823 F.2d 1554 (D.C. Cir. 1987); *U.S. Satellite Broadcasting Co., Inc. v. FCC*, 740 F.3d 1177 (D.C. Cir. 1984).

40 *Order*, ¶¶ 83, 88.

41 *RTF Recommendation* at 12.

42 Of course, as set forth in Section II.A, *supra*, the RCC Coalition believes that this decision is controlled by Section 254(e), which mandates that costs be spread *explicitly and in a competitively neutral manner*.

Not surprisingly, the Commission has *never* determined the target price for a subsidy according to the cost of providing service in a high-cost area – clearly, such a target price would not be a "subsidy" at all. In this very proceeding, the Commission's adoption of explicit Common Line Support reduced common line prices to rates *below* cost for high-cost areas. Because the Commission thus provided an explicit subsidy to reduce common line prices below cost, it makes no sense to reject an explicit subsidy to reduce traffic-sensitive *access* prices below cost on the ground that such support would not be cost based.

The Commission's half-hearted effort to justify its refusal to adopt explicit support for traffic-sensitive local switching costs represents a failure of reasoned decisionmaking. Precisely the same reasoning would apply to an explicit subsidy for *any* costs – including loop costs – yet the Commission has not hesitated to adopt such subsidies for other types of costs.

IV. REALLOCATION OF THE TIC TO LOCAL SWITCHING WAS UNSUPPORTED IN THE RECORD AND SHOULD BE RECONSIDERED.

The *Order* recognizes that the residual Transport Interconnection Charge ("TIC") is not a cost-based rate element, and thus needs to be reformed.[43] The *Order* further recognizes that "as a per-minute charge assessed on all switched access minutes, the TIC adversely affects the development of competition in the interstate access market" and that the TIC therefore "unduly increases the cost of competitive entry."[44] The *Order* directs that the TIC cost be recovered "over all access categories," including local switching.

While there was a basis in the record and Commission precedent for shifting recovery of TIC costs to transport, special access and common line, there was no such basis with respect to local switching. With respect to transport and special access, the Commission found that "some of the remaining costs recovered by the TIC result from at least two different causes affecting

43 *Order*, ¶ 99.

44 *Id.*

transport services: (1) the separations process assigns costs differently to private line and switched services, resulting in the costs allocated to special access being lower than those allocated to the transport category, even though the two services use comparable facilities; and (2) the cost of providing transport in less densely populated areas is higher than that reflected by transport rates derived from special access rates."[45] In addition, in the *1997 Access Charge Reform Order* for price cap LECs, the Commission had addressed the TIC for price cap carriers by shifting recovery to the PICCs in the Common Line basket, determining that it "should err, if at all, on the side of NTS recovery of these costs."[46] The *CALLS Order* left that cost recovery in the common line basket, and it shifted much of the recovery from the PICC into the SLC.

The *MAG Order* attempts to justify including local switching in the categories to which TIC cost recovery would be shifted on the ground that the TIC includes "traffic sensitive costs, such as switching and transport-related costs."[47] The paragraphs of the *1997 Access Charge Reform Order* to which that finding cites do not, however, support that proposition; rather, the Commission there found only that the TIC includes costs that should otherwise be recovered from switched *transport* rates.[48] Significantly, the *MAG Order* cites no support in the record of *this* proceeding for its conclusion that the TIC included local switching costs – and indeed there was none.[49]

The *MAG Order* also attempts to justify spreading TIC costs to all other access categories on the ground that "the effect of spreading the costs recovered through the TIC over all access

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45 *Id.* at ¶ 101.

46 *1997 Access Charge Reform Order*, 12 FCC Rcd. at 16082; *see also* Sept. 27, 2001 Nakahata Letter at n.19.

47 *Order*, ¶ 10.

48 *1997 Access Charge Reform Order*, 12 FCC Rcd. at 16079.

49 Sept. 27, 2001 Nakahata Letter at 7.

categories will be comparable to the economic effect of targeting the productivity increases to reducing [the TIC], as was done for price cap carriers."[50] While this observation is true with respect to the actions taken in the *1997 Access Charge Reform Order*, it ignores the effect of the subsequent *CALLS Order*. In the *CALLS Order*, all remaining TIC costs were eliminated by targeting X-factor reductions in essence *from the common line basket*. Although *switching* X-factor reductions were initially targeted to TIC reduction, the *CALLS Order* imposed X-factor reductions designed to reduce local switching and transport costs to prescribed levels without reference to any previous TIC components. Accordingly, both the TIC that existed at the time of the *CALLS Order* and any TIC costs that had already been spread to the local switching basket were, in effect, shifted to the common line basket.[51] Thus, when the *1997 Access Charge Reform Order* and the *CALLS Order* are considered together, those precedents do not provide support for reallocating TIC costs to local switching.

Particularly in light of the dangers to competition that the Commission observed with respect to per-minute recovery of the TIC – and consistent with the Commission's decision to "err, if at all, on the side of NTS recovery of these costs" – the Commission should reconsider its decision to assign TIC costs to local switching, and should instead reassign those costs either to common line alone, or to common line, transport and special access.

In addition, the Commission should reconsider the June 30, 2001 "cut-off" date for determining the TIC amounts to be reallocated.[52] By using June 30, 2001 instead of November 8, 2001 – the date of adoption of the *Order*, the Commission unintentionally and artificially

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50 *Order*, ¶ 100.

51 Sept. 27, 2001 Nakahata Letter at 7. Indeed, the Common Line basket was renamed the "Common Line, Marketing and TIC" basket.

52 *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*, Declaratory Ruling, DA 01-2871 (rel. Dec. 11, 2001).

capped TIC reallocation for carriers that had no TIC during the year ending June 30, 2001 but that had a substantial TIC in the current tariff year.[53] This artificial cap inflates transport rates contrary to the intent of the *MAG Order*.

V. THE COMMISSION FAILED TO ADDRESS PROPOSALS TO RECOVER THE INFORMATION SURCHARGE WITH COMMON LINE ELEMENTS.

As part of its alternative, comprehensive universal service and access reform plan for rate-of-return LECs, the members of the RCC Coalition proposed transferring the recovery of the information surcharge into the common line elements.[54] The information surcharge is "a rate element by which carriers recover the costs of white pages directory expenses."[55] AT&T had previously filed a petition to revoke the information surcharge waivers, on which the FCC had received full comment but upon which the Commission has never acted.[56]

Shifting the recovery of the information surcharge to common line, as proposed in the RCC Plan, would have been consistent with the Commission's actions in the *CALLS Order*. In that order, the Commission adopted the CALLS members' proposal to, in effect, shift recovery of the information surcharge to the common line basket by targeting X-factor reductions to eliminate the information surcharge and then to reduce local switching and transport to target average traffic-sensitive rates. In so doing, the Commission noted: "We also find that the elimination of the information surcharge is consistent with the Commission's policy that non-traffic-sensitive costs be recovered by a non-traffic sensitive charge."[57]

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53 *See In the Matter of December 17, 2001, MAG Access Charge Tariff Filings,* Petition of AT&T Corp., at 13-14, CCB/CPD No. 01-23 (filed Dec. 24, 2001).

54 See Exhibit D ("Rural Consumer Choice Plan: Securing Universal Service and Promoting Choice for Rural America") (Aug. 9, 2001).

55 *CALLS Order*, 15 FCC Rcd at 13021 n.301.

56 *AT&T Petition for Revocation of Information Surcharge Waivers*, CCB/CPD 98-61 (filed Oct. 9, 1998).

57 *CALLS Order*, 15 FCC Rcd. at 13028.

In light of the Commission's recognition that the costs recovered through the information surcharge are non-traffic-sensitive, and its decision to restructure the recovery of information surcharge costs in the *CALLS Order*, there is no rational basis for failing to take similar action with respect to the information surcharge for rate-of-return LECs. Moreover, commenters with respect to the AT&T petition for revocation of the information surcharge had proposed just such a per-line recovery.[58] This is what the Commission did in the *CALLS Order*, and what it failed to undertake in the *MAG Order*.

Moreover, the objections incumbent LECs had previously made to a change in the information surcharge recovery are meritless with respect to the treatment of the information surcharge proposed in the RCC Plan. Shifting cost recovery to common line does not reduce cost recovery, contrary to fears raised by USTA.[59] In addition, no new elements are being created, so shifting recovery to common line will not require the creation of new rate elements or changes to billing systems.[60]

Accordingly, on reconsideration, the Commission should direct that the costs being recovered through the information surcharge be shifted to common line elements for recovery.

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[58] Sprint, for example, argued that, "going-forward, costs associated with directory information should be recovered like other non-traffic sensitive cost – on a per line basis." Sprint Comments, *AT&T Petition for Revocation of Information Surcharge Waivers*, CCB/CPD 98-61 (filed Nov. 12, 1998), at 2; see also Reply Comments of Sprint Corporation, *AT&T Petition for Revocation of Information Surcharge Waivers*, CCB/CPD 98-61 (filed Nov. 25, 1998), at 3. WorldCom likewise urged that "to the extent that white pages expenses and other costs currently recovered through the information surcharge are 'essentially related to doing business at the local level,' as the ILECs have claimed, the Commission should require the ILECs to recover these costs through a per-line charge assessed on end users." WorldCom Comments, *AT&T Petition for Revocation of Information Surcharge Waivers*, CCB/CPD 98-61 (filed Nov. 12, 1998), at 5.

[59] Comments of the United States Telephone Association, *AT&T Petition for Revocation of Information Surcharge Waivers*, CCB/CPD 98-61 (filed Nov. 12, 1998), at 2-3.

[60] Reply Comments of the National Telephone Cooperative Association, *AT&T Petition for Revocation of Information Surcharge Waivers*, CCB/CPD 98-61 (filed Nov. 25, 1998), at 2.

VI. THE *ORDER'S* FAILURE TO REALIGN MARKETING COST RECOVERY WITH COST CAUSATION WAS ARBITRARY AND CAPRICIOUS, AND SHOULD BE RECONSIDERED.

In the *Order*, the Commission declined to adopt the tentative conclusion it had reached in 1998 that marketing costs "should be recovered through the common line recovery mechanism."[61] In reaching that tentative conlcusion, the Commission noted that in the *1997 Access Reform Order*, it had found that "price cap LECs' marketing costs that are not related to the sale or advertising of interstate switched access services are not appropriately recovered from IXCs through per-minute interstate switched access charges," and that therefore "recovering these expenses from end users instead of from IXCs is consistent with principles of cost-causation to the extent that LEC sales and advertising activities are aimed at selling retail services to end users, and not at selling switched access services to IXCs."[62]

In declining to adopt this tentative conclusion and thereby leaving portions of incumbent LEC marketing costs to be recovered from IXCs through rates for switching and transport, the Commission did not reverse its previous finding that such recovery was not consistent with cost-causation. Nor did it note any difference between the types of marketing expenses incurred by rate-of-return LECs and those incurred by price cap LECs that justified treating recovering these costs differently. Instead, the Commission argued that non-cost-causative recovery was justified because, in its view, the benefits of reassigning these expenses would be outweighed by the costs of doing so. The Commission's reasons for reaching that conclusion, however, lack support or are based on an erroneous reading of the Commission's Part 32 and Part 69 rules.

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61 13 FCC Rcd 14238, 14267 (1998).

62 *Id.* at 14266. *See also 1997 Access Reform Order* at ¶¶ 319-320; Comments of AT&T, CC Docket No. 98-77 (filed Aug. 17, 1998), at 15; Comments of MCI, CC Docket No. 98-77 (filed Aug. 17, 1998), at 21.

Thus, the Commission's failure to correct this non-cost-causative recovery would violate Section 254(e)'s prohibition on implicit support.[63]

The Commission's unsupported assertion that determining the marketing costs to be reallocated would be more difficult for rate-of-return LECs than for price cap LECs because smaller rate-of-return LECs do not keep certain subaccounts is simply incorrect.[64] Rule 69.403 identifies marketing expenses in Account 6610 as those recovered, in part, through IXC-paid access charges. Contrary to what the Commission appeared to believe, however, Account 6610 is an account kept by both Class A and Class B LECs, not a sub-account kept by only Class A LECs.[65] Thus, the *Order*'s statement that determining the costs to be reallocated for rate-of-return carriers would be more difficult because they are not required to keep Class A accounts is based on a false premise. Because all companies use Account 6610, all companies can readily determine the costs that would be reallocated if rule 69.403 were changed to direct cost recovery wholly from common line elements and interexchange. Therefore, retail marketing costs can readily be identified for reallocation to common line elements, and the costs of correcting over $8 million in inappropriate annual cost recovery are minimal. Moreover, failure to correct this non-cost-causative recovery would violate Section 254(e)'s prohibition on implicit support.

Finally, the fact that some marketing costs, which are under the control of the incumbent LEC, would be recovered from universal service support if shifted to the common line, does not support continuing non-cost-causative recovery.[66] First, for some rate-of-return LECs,

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63 *See TOPUC I.*

64 The Multi-Association Group (MAG) itself did not object to the RCC Plan's proposal that marketing expenses be recovered through common line elements. *See* Attachment to Letter of William Maher, Halperin, Temple, Goodman & Maher, to Magalie Roman Salas, Secretary, FCC, at 2 (filed Aug. 9, 2001).

65 47 C.F.R. § 32.6610.

66 *See Order* ¶ 117.

particularly for multiline business lines, these costs will be recovered from end users and not through universal service support because they will be recovered through SLCs.[67] In any event, all costs shifted to common line elements under the *MAG Order,* including line ports and TIC, are under the control of the LEC. Yet the Commission did not continue to recover these other non-traffic sensitive costs through traffic sensitive charges, even though shifting these costs to common line meant that for many LECs these costs would be supported by universal service. The Commission did not explain cogently why these non-traffic sensitive marketing costs should not be recovered through common line charges, subject to universal service support, when other non-traffic-sensitive costs were shifted to the common line for recovery.

Accordingly, the Commission on reconsideration should adopt its initial tentative conclusion, and direct that these retail marketing costs currently recovered in traffic-sensitive charges be reallocated to common line for recovery.

VII. CONCLUSION

For the foregoing reasons, the Commission should grant the RCC Coalition's Petition for Reconsideration, and revise the *MAG Order* as requested in this Petition.

Respectfully submitted,

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67 Indeed, the number of rate-of-return LECs with average common line revenue requirement per line below $9.20 was sufficiently large for NECA to propose to institute rate bands for the multiline business SLC.

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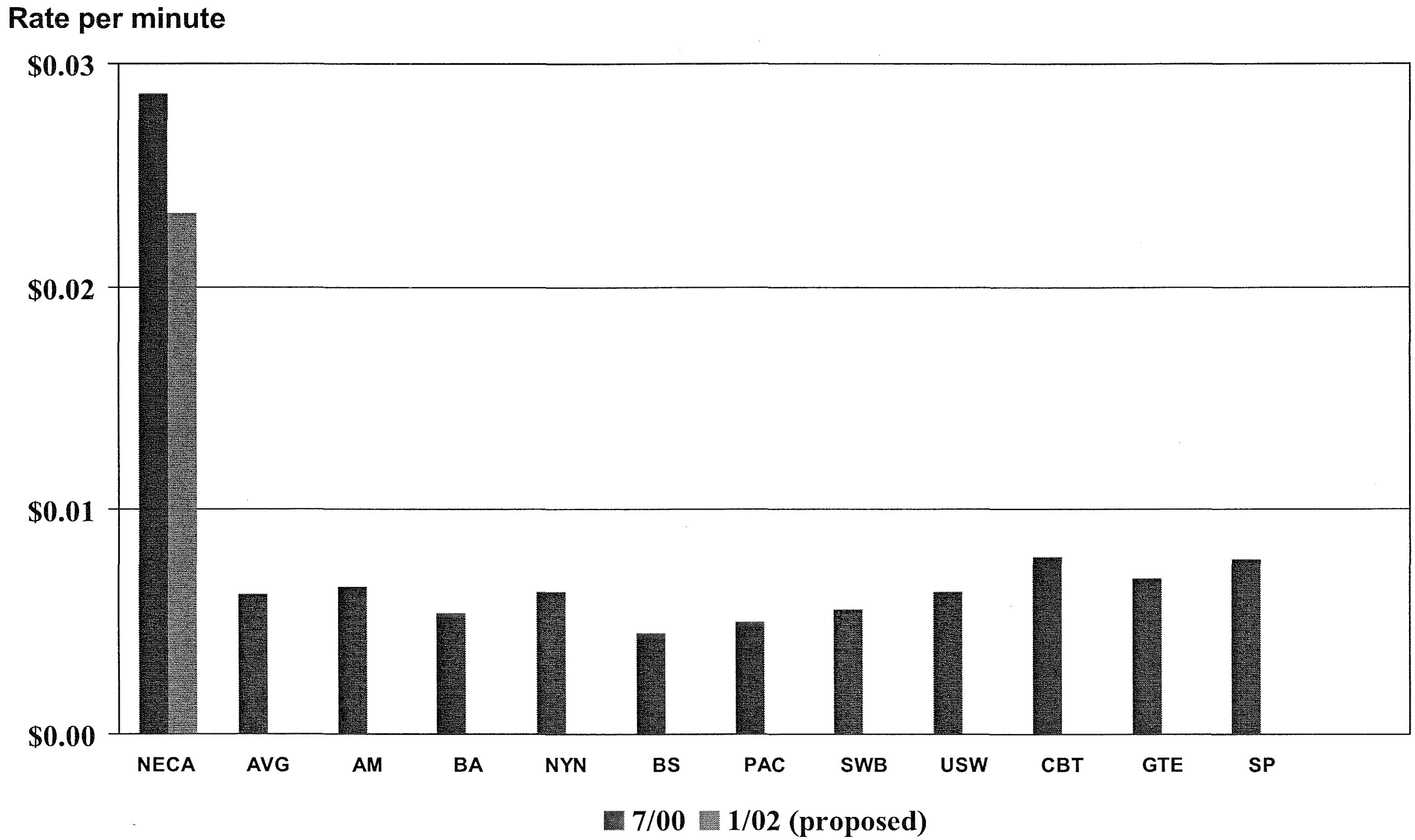
December 28, 2001

EXHIBIT A

Exhibit A

TRAFFIC SENSITIVE SWITCHED ACCESS

TOTAL PREMIUM CHARGES @ 10 MILES



LS + INFO SURCHG + TND +2 * TST + TSF @10 MI. + TIC + (DS1EF /216,000 MOUs)

Traffic sensitive access rates for price cap carriers were further reduced on July 1, 2001.
Source: www.necainfo.com (Chart 3); NECA December 15, 2001 Proposed Tariff and Supplementing Documents.

EXHIBIT B

Cognigen

Presented by: F. James - Leading global provider of discount telecom services since 1995

1-Plus Long Distance Service Providers

We represent only the best long distance companies in the country. Each company has demonstrated their ability to offer our customers a great rate as well as world-class customer service. Treat yourself to a better rate today! Can't decide on which one you like best? Use our Best Rate Calculator to find out which carrier would save you the most money.

OPEX Value-plus

OPEX (from 4.5¢ per minute) *100 free interstate minutes*
OPEX Long Distance. Outstanding (USA origination) service, featuring low intrastate and 4.5¢ interstate rates. Full minute billing. Online signup. **Receive an 8% discount by prepaying for your OPEX service.** IN-bound Toll Free Service is available for residential and business users. NOTE: The lowest rates shown apply only in 'Baby Bell' Areas (Pacific Bell, Bell South, Ameritech, US West, Southwest Bell, Bell Atlantic)*

PNG Communications

PowerNetGlobal (4.5¢ per minute) *Just 3.9¢/min in California!*
Ride the Light of the Fiber Optic Nationwide Network of Qwest. Toll free dial-around (PowerDial) and Travel Card (12.9¢/min) Services also available. Features 6-second billing, 18-second minimum for 4.9 and 5.9 rate plans. No monthly fee if usage is over $15! IN-bound Toll Free Service is available for residential and business accounts. You pay only for usage - no service charges!

UNITEL 4.5¢

Unitel (4.5¢ per minute) *6 second billing!*
Unitel Long Distance offers business and residents outstanding (USA-48 origination) service, featuring low intrastate and 4.5¢ interstate rates. **Six second billing - 18 second minimum.** Online signup. Direct billed via U.S. mail. IN-bound Toll Free Service is available for residential and business users. NOTE: This service is only available in 'Baby Bell' Areas (Pacific Bell, Bell South, Ameritech, US West, Southwest Bell, Bell Atlantic)*

tti National, Inc.

TTI National (4.9¢ per minute) *Great Rates to Canada!*
TTI National Long Distance. Outstanding (USA-48 origination) service, featuring superior reliability and customer service, low intrastate and 4.9¢ interstate rates - **including Hawaii, Puerto Rico, and the USVI!**. $25 minimum usage plus $3.95 monthly fee. Option to buy-out the intrastate rates for an additional $3 per month. Six second billing - 18 second minimum! Online signup. For commercial and high volume residential users. **Bundled internet service also available.** Direct billed via U.S. mail - Credit Card Billing available. IN-bound Toll Free Service is available for residential and business accounts. Network Services Provided by WorldCom.

capsule communications

Capsule Communications (4.9¢ per minute) *Great International Rates!*
Capsule Communications Long Distance. Outstanding (USA-48 origination) service, featuring **low intrastate** and 4.9¢ interstate rates with 30-second billing increments. Travel Card (10¢/min) Services also available. Online signup. For commercial and residential users. Direct billed via U.S. mail. IN-bound Toll Free Service is available for residential and business accounts.

iPhonebill

I-Phone Bill (from 2.9¢ per minute) *True Cost Long Distance!*
Planet Earth True Cost Long Distance. Outstanding (USA-48 origination) service, featuring low international and intrastate rates. **Cost varies from location to location.** Online signup. For commercial and residential users. Web call details, updated every 6 hours. Automatic credit card payment. **No monthly billing fee.**

PLANET EARTH COMMUNICATIONS

Planet Earth (6.9¢ per minute) *Great International Rates!*
Planet Earth Long Distance. Outstanding (USA-48 origination) service, featuring low international and intrastate rates. Online signup. For commercial and residential users. Web call details, updated every 6 hours. Automatic credit card payment. **No monthly billing fee.**

Qwest®

Qwest Business (6.4¢ to 6.7¢ per minute)
Qwest Q.Biz Long Distance. Outstanding (USA-48 and HI origination) service, featuring low international and intrastate rates. Online signup. Commercial or high volume residential accounts only. **One second billing.** $25/month minimum usage. **No monthly billing fee. IN-bound Toll Free Service is available for all business accounts. NOTE: Service not Available in USWest States.**

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EXHIBIT C

Exhibit C (1)

Effect of High TS Access Charges on LD Competition – Pre-*MAG Order*

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%
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.
- Carrier B faces a severe margin squeeze.
- Carrier C gets a substantial, artificial cost advantage.

Effect of High TS Access Charges on LD Competition – *MAG Order*

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	$0.016800	100.00%	24.00%
B (Regional carrier -- originates in non-price cap/terminates everywhere)		50	10	$0.030667	182.54%	43.81%
C (Regional carrier -- originates price cap/terminates everywhere)	400	25		$0.012941	77.03%	18.49%
Access/Conv. Minute	$0.012	$0.028	$0.044			
Access/Access Minute	$0.006	$.006 PC & $.022 NECA	$0.022			

* The NECA access rate of $.022 is based upon the estimate given by Common Carrier Bureau staff at the Commission press conference on October 11, 2001.

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

Exhibit C (3)

Effect of High TS Access Charges on LD Competition – *MAG Order* plus TS Support to $.0095

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%
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.
- Carrier B's margin squeeze is greatly reduced.
- Carrier C's artificial cost advantage is greatly reduced.

EXHIBIT D

Rural Consumer Choice Plan: Securing Universal Service and Promoting Choice for Rural America

AT&T, GCI, Western Wireless

August 9, 2001

Rural Consumer Choice Plan -- Objectives

1. Ensure affordable rates in areas served by non-price cap LECs.
2. Promote competition and choice for all Americans.
3. Remove implicit subsidies from access charges.
4. Support the national policy of toll rate averaging.
5. Promote broadband availability.

Rural America -- Problems Needing Solution

- Rural ILECs receive substantial universal service support through access charges and toll averaging (which means all consumers pay implicit subsidies because long distance companies cannot pass high access charges back to rural consumers).
- High access revenues are concentrated in a few customers.
  - Rural areas have fewer multiline businesses.
  - Implicit universal service support thru access is vulnerable to highly targeted entry (bypass) and voice/data integration.

Rural America -- Problems Needing Solution (cont'd)

- Heavy reliance on implicit subsidies (access and toll averaging) blocks competitive entry into rural areas for local and long distance services.
- Rural consumers often have small local calling areas, and pay more in toll charges.
- Blocking local entry through implicit subsidies hinders broadband deployment.

Consumer Benefits from Rural Consumer Choice Plan

- **Improved Service Thru Competition** - Competition offers larger local calling areas, improved toll packages.
- **Secure Universal Service Everywhere** – In all areas, not just Track A, reduced reliance on access revenues cuts vulnerability to targeted entry or voice/data integation.
- **Promote Residential Choice** - Replacing implicit per minute access charges with explicit per line support encourages competitors to serve residences as well as businesses in all areas.
- **Promote Broadband** - New networks are broadband-capable.
- **Reduced Costs Lower USF** - Sharing efficiency gains lowers the USF burden on consumers nationwide.

Rural Consumer Choice – Baseline Access Charge Reforms

- Increase SLC caps to CALLS levels.
- Recover ILEC USF contributions through a line charge (same as price-cap LECs).
- "Catch-up" access rate reforms.
  - Move line port charges to common line.
  - Move marketing to common line.
  - GSF reallocated to billing & collection.
  - TIC reallocated to common line.
  - Move information surcharge to common line.
- Continue to calculate revenue requirements annually under ROR formulas.

Rural Consumer Choice – Universal Service Reforms

- USF support for Common Line revenue requirement above $6.50 per line, paid on a per-line basis to ETCs (replaces non-transition CCL).
- USF support for local switching charges above $.0025/minute, paid on a per line basis to ETCs (results in NECA access rates averaging $.0095).
- No USF cap on this new common line or local switching support.
- Lifeline ensures low-income consumers pay no SLCs for Lifeline service.

Rural Consumer Choice – Incentive Regulation

- Incentive regulation is an *option*, but carriers can remain ROR.
- Permitted revenues don't increase faster than historically under ROR.
- Increased returns come from efficiency gains.
- Efficiency gains shared between carrier and the USF.
- Carriers opting for incentive regulation make an upfront reduction in permitted revenue.

RCC Plan -- Solutions Address Problems

- Reduced reliance on access cuts vulnerability to targeted entry or voice/data integration.
- Explicit common line USF will keep end user charges reasonably comparable to, *but not lower than*, urban and rural price-cap LEC areas.
- Explicit rate averaging support creates an economically sustainable means to support toll rate averaging, and encourages new LD providers to extend service to non-price cap areas.
- All USF support is explicit, competitively neutral and sustainable as competition increases. Portable USF promotes local service choice, especially for residences.
- Competition means better calling plans and features.

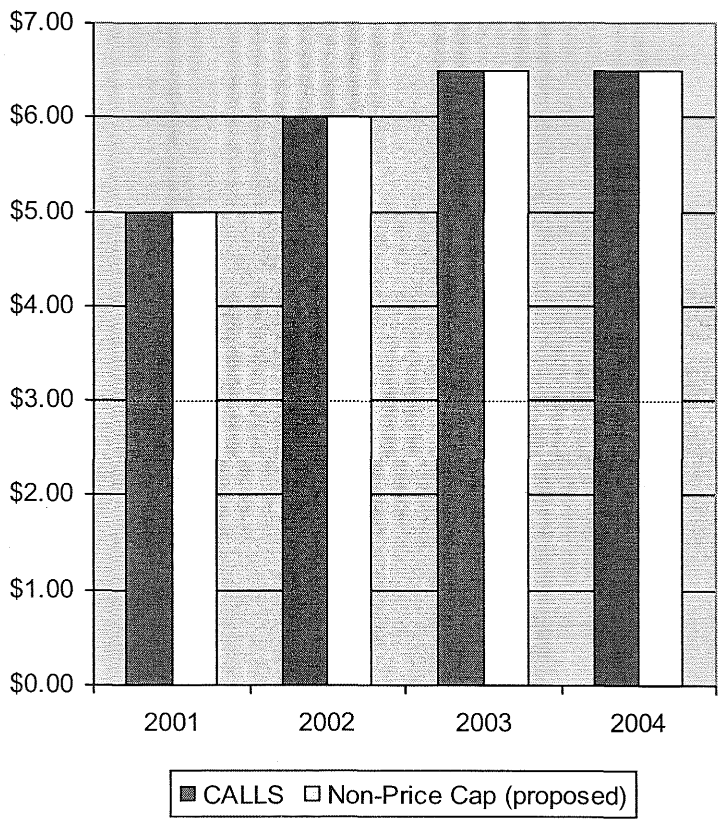
Not Included in RCC Plan

- No universal service support for special access services. Special access does not affect toll rate averaging.
- USF support is not optional.

Consumer Benefits MAG v. RCC

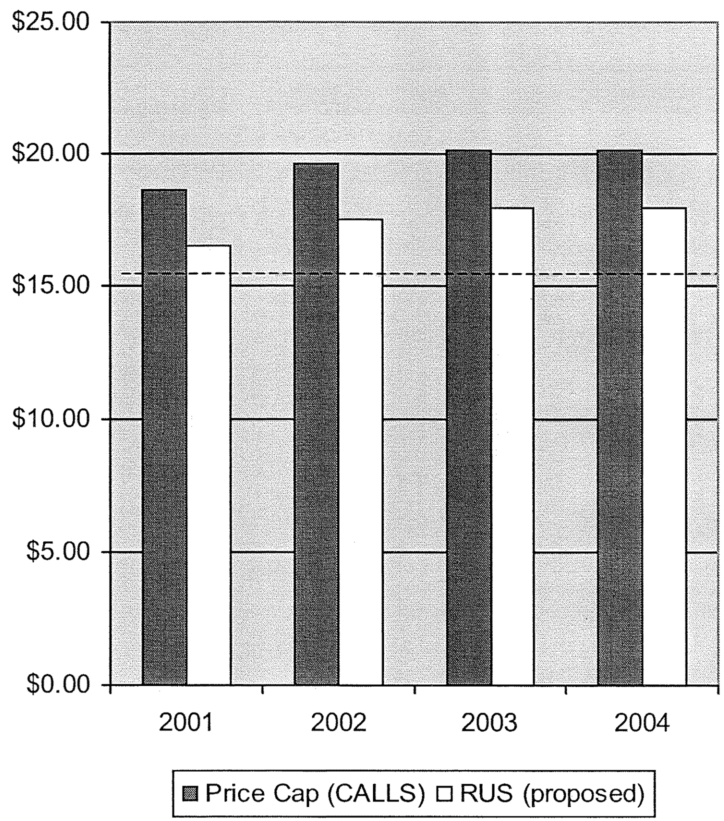
Benefit	MAG	RCC
Support universal service in all areas.	No. Track A only.	Yes.
Increase LD choice by cutting access rates.	Track A only, and only to $.0160.	Yes, to average $.0095 (NECA).
Promote residential local choice	Track A only.	Yes.
Promote broadband.	Track A only.	Yes.
Increase Lifeline support	Yes.	Yes.
Share efficiencies from incentive reg.	No.	Yes.

Comparable Rates – Primary Residential SLC Caps



- Without reform, non-price cap SLC rates will be permanently below price cap SLC rates.
- Proposal aligns price cap and non-price cap SLC caps.
- No loss of subscribership from CALLS SLC changes.

Comparable Residential Rates – Total Fixed Monthly Bill (RUS v. Urban)



- Rates remain comparable.
- CALLS Order increased RUS/Urban differential
- Even with SLC cap reforms, fixed monthly bills for RUS borrowers are *below* urban average plus SLC caps.

$.0025 Target LS Price

- NECA local switching rates ranges from $.0072 to $.0241 (less 30% for port, ~$.0050 to $.0169).
- NECA transport rates average $.0071.
- Setting a local switching threshold at $.0025 ensures that NECA traffic sensitive charges average $.0095, comparable to rural CALLS LECs.
- Subsidy for local switching rather than ATS preserves existing transport price relationships and opportunities for transport competition.