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1300 Connecticut Ave, N.W.,
Suite 1000
Washington, D.C. 20036
www.wallman.com

voice 202.347.4964
fax 202.347.4961

December 31, 2001

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

Re: Petition for Reconsideration of the Plains Rural Independent Companies in CC Dockets 00-256, 96-45, 98-77 and 98-166

Dear Ms. Salas:

Please find enclosed the original and twelve copies of the Plains Rural Independent Companies' Petition for Reconsideration in the above-captioned proceeding. Thank you for your attention to this matter.

Sincerely,

Lisa M. Zaina
Vice President

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

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In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

To: The Commission

PETITION FOR RECONSIDERATION

of the

PLAINS RURAL INDEPENDENT COMPANIES

December 31, 2001

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SUMMARY

The Plains Rural Independent Companies file this Petition for Reconsideration of the Commission's *Order* released November 8, 2001, that restructures the access charge rates for rate-of-return LECs. Reconsideration of the *Order* is required to properly align traffic-sensitive transport cost recovery with traffic-sensitive rate elements and charges and to avoid improperly recovering traffic-sensitive transport costs through the unrelated common line element. The *Order* should be modified to allow the identification of transport costs currently included in the Transport Interconnection Charge ("TIC") for reassignment to the proper transport elements. None of the current TIC should be reallocated to the common line element. In the interim, the Commission should restore the TIC until the proper reallocation can be resolved.

Contrary to the rationale in the *Order*, the costs that are currently recovered by the TIC can be specifically tracked through history and the cost allocation process. The Commission's own rules provide the necessary analysis of the TIC. The accounting, categorization, jurisdictional separations, and access element rules specifically identify the specific transport and tandem switching costs included in the TIC. Simple review of these processes is all that is required to reallocate the TIC properly. The reallocation of the TIC should not ignore these facts.

The TIC reallocation required by the *Order* would shift more than half of the TIC recovery to the common line element. There are no specific common line costs recovered by the TIC today. Therefore, reallocation of traffic sensitive transport costs to an unrelated common line element should be abandoned.

The only possible unresolved issue is whether the jurisdictional cost allocation rules have some effect on transport costs of rate-of-return LECs and whether changes to these rules are warranted. Regardless, changes to the Part 36 cost allocation must be referred to a Joint Board for further examination and recommendation prior to any changes.

The theoretical, practical, and sometimes voluntary treatment of price-cap companies over the last decade does not provide justification for the mistreatment of the actual costs of rate-of-return LECs. The regulation of prices of the price-cap companies has deviated significantly, and the treatment cannot be compared to that of rate-of-return companies. Regardless, the price treatment of price-cap companies is not relevant to the evaluation of the costs of rate-of-return LECs.

The Plains Companies provide the Commission with several steps that should be taken to modify the *Order* and reevaluate the treatment and resolution of the TIC. No changes in the TIC should be made unless and until further analysis of the actual costs can be completed. In any case, no costs currently recovered via the TIC should be moved to the unrelated common line element. Ultimately, rate-of-return companies should be afforded the opportunity to develop transport and tandem switching rates based on their identifiable network costs associated with the specific access service functions. The modified approach will allow rate-of-return LECs "to establish rates based on their own costs in the areas they serve, rather than being forced to conform to a prescribed target rate." The arbitrary reallocation of the TIC required by the *Order* is inconsistent with this principle, effectively prescribes an arbitrary rate structure and rates, neglects the genesis and evolution of the TIC, and should be abandoned.

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To: The Commission

PETITION FOR RECONSIDERATION

The Plains Rural Independent Companies ("Plains Companies") file this Petition for Reconsideration of the *Order* released by the Commission on November 8, 2001 in the proceedings captioned above.[1] Reconsideration of the *Order* is required to properly align traffic-sensitive transport cost recovery with traffic sensitive rate elements and charges and to avoid improperly recovering traffic-sensitive transport costs through the non-traffic sensitive common line element. As this Petition demonstrates, the Commission should modify its *Order* to allow non-price cap local exchange carriers ("LECs") to identify the allocated transport costs currently included in the Transport Interconnection Charge ("TIC") and move this recovery to the proper transport rate elements. None of the current TIC recovery should be reallocated to the unrelated

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[1] *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166* ("*Order*") released November 8, 2001.

common line element. Moreover, the Commission should act as soon as practical to correct the unwarranted effects of the TIC reallocation provision of the *Order*. The TIC should be restored until such time as the costs currently recovered via the TIC can be reallocated to the proper access elements.

I. INTRODUCTION

The Commission concluded in the *Order* that the portion of interstate access costs currently recovered through the TIC should be reallocated (*i.e.*, spread across other rate elements) and effectively eliminated. The consequence of this reallocation is that the costs previously recovered by the TIC will now be recovered through the remaining transport rate elements, other traffic-sensitive rate elements, and the non-traffic sensitive common line element.[2]

The Plains Companies are a coalition of 21 incumbent LECs that serve rural areas in the Plains states of Nebraska and Iowa.[3] The Plains Companies represent a unique subset of rate-of-return LECs that on average serve areas that are more sparsely populated. The ultimate effects of the *Order* on the operations of the Plains Companies are significant because the *Order* requires the reallocation of traffic-sensitive cost recovery to the common line rate element.[4] As a result,

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[2] *See, e.g.*, *Order* at para. 98.

[3] The Plains Companies are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Southeast Nebraska Telephone Co., Schaller/ANC Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

[4] The Plains Companies have geographically large and relatively isolated service areas and thus significant transport across these areas. The Plains Companies tend to be located away from the major population centers in which access tandems are located. Some of the companies'

(continued...)

the cost recovery of the Plains Companies and all other rate-of-return LECs will be inconsistent with the manner in which the reallocated costs are incurred (on a traffic-sensitive basis), and the reallocated interexchange service transport costs will not be recovered from the service users of interexchange service who are the cost causers. Instead, these costs will be improperly recovered either through flat charges on end users or through the new common line support fund.

The reallocation of the TIC element to both traffic sensitive and non-traffic sensitive elements is inconsistent with the traffic sensitive nature of the transport costs that are currently recovered by the TIC. The reallocation ignores the cost derivation, genesis and evolution of the TIC. As demonstrated herein, this result is inconsistent with facts and the Commission's own policies that traffic sensitive costs should be recovered on a related traffic sensitive basis.[5] For these reasons, the TIC reallocation mechanism should be modified on reconsideration. The discussion below will elucidate the mistaken assumptions underlying the TIC provisions of the *Order*.

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[4] (...continued)
end offices are located more than a hundred miles from the nearest access tandem. Thus, the Plains Companies have a greater transport cost recovery requirement and a greater reliance on the TIC as a source of cost recovery for the provision of transport functions.

[5] The Commission states throughout the *Order* that its actions are designed to rationalize the access rate structure and to drive the per-minute access rates to lower levels. *See, e.g., Order* at para 1. The TIC reallocation drives traffic sensitive rates to non-cost based levels that are too low and forces a non-rational recovery of costs that vary with usage without consideration of that usage. However, this reallocation violates the Commission's objective to "align the interstate access rate structure more closely with the manner in which costs are incurred . . . ." *Id.* at para. 3. This reallocation is inconsistent with the conclusion that rate-of-return carriers "will retain the flexibility to establish rates based on their own costs in the areas they serve. . . ." *Id.* at para. 12. The *Order*, however, requires that traffic sensitive costs (including transport costs) that vary with usage (on the basis of minutes, distance, and the number of circuits) and should be recovered from interexchange carrier access users should nevertheless be recovered on an unrelated basis without regard to cost causer. There has not been and could not be any finding that transport costs do not vary with usage.

II. THE REQUIREMENT THAT SPECIFICALLY IDENTIFIABLE TRAFFIC SENSITIVE TRANSPORT COSTS BE TREATED AS IF THESE COSTS WERE NON-TRAFFIC SENSITIVE IS IMPROPER, ARBITRARY, AND REQUIRES RECONSIDERATION.

A significant portion of the TIC cost recovery will be shifted to the common line element as a result of the TIC reallocation.[6] Accordingly, costs that are associated with transport access services and functions[7] and currently recovered on a traffic-sensitive, usage basis will now be treated improperly as if these costs are common line in nature and will be recovered on a non-traffic sensitive basis. Traffic-sensitive cost recovery should not be shifted to the non-traffic sensitive common line element because to do so would be inconsistent with the Commission's own policies and principles regarding efficient rate structures and the alignment of cost recovery with cost causation.

A. THE GENESIS AND EVOLUTION OF THE TIC COST RECOVERY CAN BE SPECIFICALLY TRACKED THROUGH HISTORY AND THE COST ALLOCATION PROCESS.

The restructuring of the transport rate structure and elements has spanned a decade and is the product of several complicated Commission orders.[8] The TIC was designed to recover transport cost assigned to the local transport element that would not be recovered by the actual

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[6] The result for a typical rate-of-return LEC is that more than half of the costs previously recovered via the TIC are now recovered through the common line element. Moreover, for many rural carriers, the TIC has represented the majority of their transport cost recovery.

[7] The various transport rate elements are "entrance facilities," "direct-trunked transport," and "tandem-switched transport." *See Order* at para. 72 and notes 224-226. There are various subelements for the tandem-switched transport service. *Id.*

[8] Moreover, the path on which price-cap carriers proceeded over the last 10 years in their development of access rates, including restructuring of transport prices and the TIC, deviated from the path for the rate-of-return carriers. Over time, the price calculations and other requirements imposed on price-cap carriers, compared to the actual cost basis under which rate-of-return carriers have proceeded, has led to an incongruent approach between the two groups of carriers. However, throughout the *Order*, the Commission refers to its decisions regarding price-cap carriers as the apparent rationale for its decisions for the small rate-of-return LECs.

transport rate elements.[9] Moreover, the Commission prescribed the rate levels for the non-TIC, actual transport rates. In prescribing the complement of transport rates in 1992, the Commission decided to use special access rates as a surrogate to establish the direct trunked transport and the transmission portion of tandem-switched transport rates.[10] The Commission also decided to reassign, to the TIC, 80 percent of the costs assigned to the tandem-switched element.[11] The arbitrary 80 percent reassignment of tandem switching cost recovery was designed to avoid dislocation of access charges among different size interexchange carriers.[12]

The direct-trunked transport and the transmission portion of the tandem-switched transport rates were set artificially lower than the allocated costs for transport because these rates were based on non-representative special access prices.[13] The Commission noted in 1997 that

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[9] "For rate-of-return carriers, the interconnection charge shall be computed by subtracting projected entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signaling transport revenues from the Part 69 transport revenue requirement, and dividing by the projected total transport minutes." *See* In the Matter of Transport Rate Structure and Pricing, Petition for Waiver of the Transport Rules filed by GTE Service Corporation, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket 91-213, ("*First Transport Order*") 7 FCC Rcd 7006, 7038 (para. 61) and 7107.

[10] *First Transport Order*, 7 FCC Rcd 7010 (para. 8).

[11] *First Transport Order*, 7 FCC Rcd 7105 (Appendix D: Rule Changes, Section 69.111(e): ". . . the tandem charge shall be set to recover twenty percent of the projected annual Part 69 interstate tandem revenue requirement . . . ."). *See also* 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, *First Report and Order,* CC Docket Nos 96-262, 94-1, 91-213, and 95-72, ("*Second Transport Order*") 12 FCC Rcd 15982, 16072, and 16306.

[12] "Except for SS7 costs [addressed elsewhere], parties have not presented any other information indicating that the tandem revenue requirement includes other costs unrelated to tandem-switched transport. In order to ease the impact of a rate structure change on small IXCs, however, we prescribe that the tandem element initially recover only twenty percent of the current tandem revenue requirement, with the remainder of the revenue requirement recovered through the interconnection charge . . . ." *First Transport Order*, 7 FCC Rcd 7019 (para. 25).

[13] "[T]he separations process assigned costs differently to private line and message (i.e.,

(continued...)

the jurisdictional cost allocation process (*i.e.*, Part 36 of the Commission's rules) separates the costs for message services differently than for special access.[14] The Commission concluded that "special access-derived rates reflect the costs of transport in areas in which special access service are most often offered (urban, higher density areas), and do not reflect the costs of transport in rural, less dense areas."[15] In tracing the genesis of the TIC, the Commission determined that the "cost of providing transport in less densely populated areas is higher than that reflected by transport rates derived from those special access rates."[16]

Accordingly, the actual transport rates (*i.e.*, the non-TIC transport rates) for the smaller, more rural LECs have been set lower than the costs of these LECs for at least two reasons: (1) the rate for tandem switching has been artificially reduced to address the potential access charge impact on smaller IXCs that would have resulted from the restructuring of transport; and (2) the rates for direct-trunked and the transmission portion of tandem switched transport have been distorted for companies with less dense transport routes because the Commission decided to use special access rates as a surrogate for switched access transport.[17] In both cases, the transport and tandem switching costs that would have otherwise been properly recovered via the actual transport rates for the smaller, rate-of-return LECs were shifted to recovery via the TIC rate

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[13] (...continued)
switched) services, resulting in costs allocated to special access being lower than those allocated to the message category, even though the two services use comparable facilities -- rates for direct-trunked transport and the transmission component of tandem-switched transport, which are switched services, therefore, do not recover the full amount of separated costs. . . ." *Second Transport Order*, 12 FCC Rcd 16079 (para. 225).

[14] *Second Transport Order*, 12 FCC Rcd 16079 (para. 224).

[15] *Second Transport Order*, 12 FCC Rcd 16079 (para. 224).

[16] *Second Transport Order*, 12 FCC Rcd 16079 (para. 225).

[17] *See Order* at n. 227.

element. However, while these methods were more arbitrary, traffic sensitive costs were combined for recovery via the TIC that was still a traffic sensitive charge unlike the current Order where the Commission is spreading traffic sensitive costs across a non-traffic sensitive element. Now, the Commission has disregarded its own conclusions, the actual costs of the rate-of-return carriers, and the derivation of the TIC and has reallocated its recovery inconsistent with the development of the TIC rate element and the costs included in the element.

The Commission's own cost allocation and rate development rules provide the straightforward analysis of the derivation of transport costs and the resulting TIC. Simple review of these processes is all that is necessary to determine the nature of the costs recovered via the TIC and to which rate element the cost components should be appropriately reallocated. This analysis illustrates the flawed approach in the *Order*.

The derivation of trunking and circuit equipment costs that are allocated and included in the interstate transport cost elements is inherent in the Commission's own rules and exceedingly straightforward. The cable and wire facilities and circuit equipment that are used for interstate transport functions are directly identified by the Commission's Part 32 accounting and Part 36 cost categorization process.[18] These costs are allocated to the interstate jurisdiction based on factors that are directly proportional to the relative use of the facilities; in this case, interstate and intrastate minutes, kilometers (distance), and circuits.[19] Finally, following the accounting, categorization, and relative use allocation pursuant to the jurisdictional separations rules, Subparts D and E of the Commission's Part 69 Rules prescribe the treatment of the specific

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[18] *See, e.g.*, 47 C.F.R. §§ 36.151-153 (cable and wire facilities, specifically § 36.152(b)) and §§ 36.126 (circuit equipment, specifically category 4.23).

[19] *See, e.g.*, 47 C.F.R. §§ 36.156 and 36.126(e)(3).

interstate costs for the various access elements. This access element development is based on the identification of specific interstate transport related costs related to the categorized costs and the actual functions performed.[20]

Similarly, as the Commission has explained, it is equally easy to trace the derivation of the tandem switching components of transport costs:

> The interstate costs of access tandem switches, however, can be derived from our current rules. The cost allocation process begins with our accounting rules . . . . Tandem switch investment is recorded in the central office switching accounts. . . . The next step is the separations process, governed by Part 36 of our rules. All tandem switch costs are put into one separations category, which is called Central Office Equipment (COE) Category 2. The costs are then split between the state and interstate jurisdictions in proportion to the relative state and interstate minutes of use. After separations, the interstate costs are put into the appropriate access categories, as governed by Part 69 of our rules. Tandem switching costs are assigned to transport, except for a very small amount [associated with corridor traffic]. Thus, it is easy to trace tandem switching costs through the cost allocation process.[21]

Therefore, as the Commission correctly observed, one can trace and identify the interstate tandem switching costs. In addition, 80 percent of these easily identifiable and traceable costs were reassigned to the TIC element pursuant to the restructuring of transport. The Commission should not ignore these facts. Nevertheless, by effectively eliminating the TIC and reallocating over 50 percent of its cost recovery to an unrelated, non-cost based, non-traffic sensitive common line element, the actual component of the TIC that is tandem switching costs has been ignored. There is no justification for this deviation from the factual basis that underlies the development of the TIC.

Accordingly, the Plains Companies cannot accept the Commission's decision to eliminate and reallocate the TIC based solely on the Commission's statement that it cannot determine the

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[20] *See, e.g.*, 47 C.F.R. §§ 69.305-306.

[21] *First Transport Order*, 7 FCC Rcd 7018-9 (para. 24), footnotes omitted.

transport costs included in the TIC.[22] The derivation of the TIC rate element can be traced exactly through the accounting, categorization, jurisdictional allocation, and access element assignment processes from its beginning until the present. The record does exist but has been ignored in arriving at what is simply an arbitrary reallocation. The Commission, in its various orders related to transport restructure, has already identified (1) the mechanisms within the cost categorization and allocation process; (2) the rate development based on surrogate special access rates; and (3) the reassignment of tandem switching costs, that "caused" the establishment and continuation of the TIC element. For those LECs that participate in the pools administered by the National Exchange Carrier Association ("NECA"), the record already exists because the derivation of the TIC over time can be traced specifically through the various access tariff filings and supporting information. For other carriers, a record exists because the portion of transport cost reallocated to the TIC can equally and easily be determined by the review of their tariff filings over time.

At the very least, a proper evaluation of the TIC must take into consideration the underpricing of direct transport and the transmission portion of tandem switching and the 80 percent tandem switching reassignment prior to any improper transfer or reallocation of any transport costs to the non-traffic sensitive element.[23] Truly traffic sensitive costs should not be

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[22] *Order* at para. 101. The Commission's own orders and the historical development of the TIC rate element already form the record and facts which provide the Commission with conclusive information regarding what costs are recovered via the TIC. These facts demonstrate that the TIC recovers traffic sensitive costs that would otherwise be recovered via other traffic sensitive rates. There is nothing to support a decision to move over 50 percent of these traffic-sensitive costs to an unrelated non-traffic sensitive access cost element.

[23] As discussed above, the transport costs for rural LECs in less densely populated areas (with smaller trunk groups and longer distances) are higher than the special access surrogate price would indicate. Moreover, in rejecting the MAG target access rate, the Commission

(continued...)

recovered inconsistent with the manner in which these costs are incurred but should be recovered on the basis of variables proportional to the cost incurred; *i.e*, on the basis of minutes, miles, and circuits. By ignoring the cost components of the TIC, the result of the requirement to reallocate the TIC arbitrarily will be that carriers' transport rates will not be cost-based.[24/] Moreover, it will make cost recovery less explicit than is the Commission's goal.

B. THERE ARE NO SPECIFIC COMMON LINE COSTS RECOVERED BY THE TIC.

An evaluation of the genesis and evolution of the TIC reveals that the cost allocation and rate development can be specifically traced and the derivation of the TIC can be specifically identified. Nowhere in this process have the costs of common lines been allocated to transport or the TIC. While the Commission has pondered the question of whether the jurisdictional separations process treats message telephone and special access costs correctly (to be discussed

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[23/] (...continued)
realized that "many rate-of-return carriers have traffic sensitive costs considerably higher than 1.6 cents per minute." *Order* at para. 83. By neglecting the pricing that resulted from the use of the special access surrogate, the Commission has distorted the transport rates of many carriers, inconsistent with the objective of providing proper cost recovery "signals" that are the result of rates that "reflect an individual carrier's cost of service." *Order* at para. 84. As the Plains Companies explained in their comments, the resulting access rates should not be below cost. *Id.* at n. 248. By explicit design of the past actions, the transport rates that would result from the requirements in the *Order* will be below the transport costs of the small and rural carriers.

[24/] The Commission's objective has been to align costs, and the rate structures for the recovery of those costs, more closely with the manner in which costs are incurred. *Order* at para. 3. Transport costs are incurred on a traffic-sensitive basis (*i.e.*, transport costs incurred are proportional to the quantity of minutes transported and the number of miles over which traffic is transported). In contrast, the Commission's rate structure treatment of common line costs is likely to be inconsistent with the traffic-sensitive nature of the transport costs at issue. This Petition seeks the proper rate structure and cost causer treatment of traffic-sensitive transport costs. This Petition does not address the merits, or lack thereof, of the Commission's treatment of common line costs in the *Order*. This Petition is not intended to affect the Plains Companies' rights to comment and participate further in any separate proceeding that may address the proper cost recovery structure and approach for common line costs. Common line cost recovery presents a different set of complex issues that are separate from the treatment of traffic sensitive costs where relative use allocation and cost causer aspects are relatively straightforward.

below), the costs at issue in this evaluation are overhead costs, not actual common line costs. Nowhere in the history of the derivation of the TIC have common line costs been included in its recovery. Accordingly, the Commission incorrectly assumes that the TIC recovers common line costs when it states at para. 100 of the *Order* that it "concludes that spreading the costs currently recovered through the TIC over all access categories is most consistent with the record before us . . . ." As this Petition demonstrates, the correct conclusion is that the TIC recovers traffic sensitive transport costs that have been arbitrarily removed from the actual transport elements related to these costs.

C. THE ONLY UNRESOLVED QUESTION, IF ANY, IS RELATED TO THE JURISDICTIONAL SEPARATIONS PROCESS.

In 1997, the Commission noted that there may be anomalies or disparate treatment of private line (*i.e.*, special access) compared to public switched message telephone service costs.[25] While the history of the TIC and the sequence of events demonstrate a greater likelihood that the actual transport rates of rate-of-return carriers have been understated, the Commission's motive has been to find ways to reduce the residual TIC. As such, the Commission has questioned whether the jurisdictional separations process introduces some distortions in cost allocation. The Commission has suggested that mechanisms within the jurisdictional cost allocation process may have some effect on the ultimate transport and TIC derivation. In so doing, the Commission stated that "[b]ecause we will soon be considering a Notice of Proposed Rulemaking to refer to a Joint Board questions regarding separations, we will leave the determination of the ultimate allocation of the remaining costs recovered by the TIC until the conclusion of that proceeding."[26]

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[25] *Second Transport Order*, 12 FCC Rcd 16078-9.

[26] *Second Transport Order*, 12 FCC Rcd 16079. The Commission also stated that "[i]f the (continued...)

To date, there has not been any Joint Board recommendation on these issues, and there have been no cost allocation changes.[27]

D. THE ACTION TAKEN IN THE *ORDER* IS INCONSISTENT WITH THE COMMISSION'S PREVIOUS DECISIONS AND THE FACTS.

Consistent with the discussion set forth above, there are several specific conclusions which must be drawn from actual history, the sequence of Commission actions on transport structure, and the resulting access rates:

1. Direct-trunked and the transmission portion of tandem-switched transport are underpriced for small and rural carriers because the pricing has relied on costs related to special access. The price for special access does not reflect the cost of transport in the more rural areas.

2. Eighty (80) percent of the transport costs allocated to the tandem switching element are nevertheless not recovered by the tandem switching charge.

3. There may be some jurisdictional separations processes in need of review that affect the costs allocated to special access compared to message telephone service costs, and these processes may have some effect on the ultimate cost determined to be transport in nature.

4. Any evaluation of, or change to, the jurisdictional separations processes still awaits a Federal-State Joint Board proceeding.

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[26] (...continued)
Joint Board on Jurisdictional Separations takes action to address this issue, we will then consider what corresponding reallocations should be made. *Id.*

[27] It is unclear to the Plains Companies whether the issues mentioned have actually been referred to the Joint Board or whether there has been any further examination of the issues.

E. THE TREATMENT OF PRICE-CAP COMPANIES DOES NOT PROVIDE JUSTIFICATION FOR THE TREATMENT OF ACTUAL COSTS OF RATE-OF-RETURN LECs.

The Commission's reliance on actions taken with respect to price-cap carriers does not justify an ill-conceived or arbitrary approach for rate-of-return carriers, nor can the treatment of price-cap carriers be construed to be consistent with the approach imposed by the *Order* with respect to the TIC.[28] The rates of price-cap carriers have been allowed to deviate from the cost basis that applies to rate-of-return carriers by virtue of price-cap rate offsets (without regard to actual cost changes) and greater relative pricing flexibility. In addition, the voluntary access rate changes that the price-cap carriers agreed to in response to the CALLS proposal were made without regard to specific identification of costs. This divergence between price-cap carriers and rate-of-return LECs has progressed for more than a decade. In fact, every time the Commission modified the rules for the price-cap carriers, it moved them further away from rate-of-return regulation, and beyond comparison to the rate-of-return carriers. As a result, access prices and their evolution can hardly be considered comparable between price-cap and rate-of-return carriers. Furthermore, a comparison of the access rates of price-cap companies to those of rate-of-return companies over the last decade shows that the TIC element has evolved, as a result of its derivation, to a much larger proportion of overall transport cost recovery for rate-of-return companies than for price-cap companies.[29]

The Commission has focused in the *Order* on the actual recorded costs of rate-of-return

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[28] *See, e.g., Order* at paras. 98 and 100.

[29] As discussed above with respect to transport costs and rates, the Commission previously concluded that special access rates may be more comparable to the transport costs in urban areas typically served by price-cap carriers and less likely to be comparable to the transport costs for transport routes in rural, less densely populated areas as served by the Plains Companies.

carriers as the basis for its decision and development of access rates. In contrast, a price-cap carrier's decision to voluntarily phase out a particular rate element involves its determination as to whether its expected earnings levels can absorb the lost revenue. Just because a price-cap carrier may have decided that it could absorb the elimination of an access charge element, it does not follow that the costs that were previously recovered by that element have been redistributed or that the costs have been redistributed in a particular manner.[30/] The only reality is that the price-cap carrier's revenues were at sufficient levels, more than it deemed necessary, and therefore the carrier is prepared to absorb less overall cost recovery. It is an impermissible stretch of logic to suggest that a specific rate element elimination is a reallocation of costs because it is speculative and theoretical to suggest from which specific basket or rate element the price-cap carrier is absorbing the reduction in earnings. Moreover, the price-cap carrier's costs have not changed when the element was eliminated, and the elimination of the element did not consider what the price-cap carrier's relative costs were among elements.[31/]

Regardless of any theoretical analysis of price-cap carrier treatment, it is not relevant to rate-of-return carriers' costs. Non-cost based, potentially arbitrary, and voluntary price changes adopted by price-cap carriers do not form a rational basis for the determination of cost-based transport rates or an involuntary prescription of transport rates for rate-of-return carriers. Furthermore, any voluntary acceptance by the price-cap companies of an arguably arbitrary price

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[30/] The price-cap companies did not reallocate costs recovered through the TIC to common line prices as is required by the *Order* for rate-of-return carriers. The price-cap companies did not reallocate cost recovery, at all. The very nature of price caps is that prices change without regard to calculated costs.

[31/] The Commission also found in the *Second Transport Order* that no portion of the costs recovered by the TIC should be allocated to some form of universal service support recovery. *Second Transport Order*, 12 FCC Rcd 16086 (para. 242).

change does not justify ill-conceived treatment for rate-or-return carriers and does not change the nature or level of the rate-of-return LECs' transport costs. In many instances in the *Order*, the Commission attempts to rationalize its decision based upon decisions it made and applied to the clearly very different price-cap carriers. Framing any sort of rationale for this *Order* based on decisions made for the non-rate-of-return carriers does not constitute justification or a reasonable result consistent with the facts and established policy.

III. CONCLUSION

The Commission should reconsider and abandon its arbitrary elimination and reallocation of the TIC cost recovery. The determination of access rates for rate-of-return carriers should be based on the assignment of costs to the appropriate jurisdiction and actual rate elements consistent with the functional nature of the costs. The determination of access rates should not be based on unverified presumptions that result in the circumvention of clearly identifiable cost. Also, the determination of access rates should not result in the allocation of traffic sensitive costs to non-traffic sensitive cost recovery. To resolve the arbitrary circumstances, the following steps should be taken:

1. The actions prescribed in the *Order* relative to the TIC reallocation for rate-of-return carriers should be reversed immediately. No changes in the TIC recovery should be made unless and until further analysis of the actual costs recovered via the TIC can be completed and this analysis demonstrates what the proper reallocation should be.

2. There can be no justification for moving traffic sensitive costs currently recovered via the TIC to the common line non-traffic sensitive element. This unreasonable aspect of the *Order* should be completely abandoned because there is no rational basis for this mismatch in cost recovery.

3. Tandem switching costs should be recovered via the tandem switching element as the Commission concluded in the *First Transport Order*. Accordingly, LECs should be allowed to establish rates for tandem switching without being required arbitrarily to remove 80 percent (or any other arbitrary level) of the cost of tandem switching.

4. Consistent with the facts demonstrated above, rate-of-return LECs should be allowed

to establish rates for direct-trunked transport and the transmission portion of tandem switching based on the costs of providing these functions as developed in the Commission's Parts 32, 36 and 69 Rules. The Commission, through further reconsideration of the *Order*, should review and determine the proper method to allocate transport facility and termination costs to direct transport and tandem switched transport rate elements. With this approach, rates for these elements would be based on actual transport element costs and not on a special access rate surrogate that is inaccurate for rural LECs.

5. To the extent that the examinations described above do not absorb the cost recovery currently reflected in the TIC, then it would be reasonable for the Commission and the Joint Board to consider changes in cost allocation that would address any remaining TIC recovered costs. To this extent, the Commission should initiate a Notice of Proposed Rulemaking to refer to the Joint Board the question of whether some of the recovery of the TIC can be traced to Part 36 separations results and whether changes are warranted. This evaluation can examine the allocation of costs between message telephone and private line as well as the resulting state and interstate jurisdictional allocation.

The ratemaking requirements imposed by the *Order* disregard the facts and actual costs of the rate-of-return LECs. As an immediate and interim measure, the Commission should restore the TIC without reallocation. Consistent with this Petition and the steps outlined above, a reallocation of the TIC to the actual transport elements is far more reasonable and consistent with the facts, given the TIC's components and history, than an arbitrary allocation under which a significant portion of the TIC is moved to non-transport elements, including the unrelated common line element.

The modified approach set forth above is consistent with the Commission's conclusion that rate-of-return carriers "will retain the flexibility to establish rates based on their own costs in the areas they serve, rather than being forced to conform to a prescribed target rate."[32/] The approach required by the *Order* does not allow small and rural LECs to establish transport rates based on their costs of transport but instead requires an arbitrary prescribed rate by virtue of neglecting the genesis, evolution, and the reassignment of costs between actual transport rate

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[32/] *Order* at para. 12.

elements and the TIC. For these reasons, the Commission should reconsider and modify this provision of the *Order* consistent with this Petition.

Respectfully submitted,

PLAINS RURAL INDEPENDENT COMPANIES

By: Lisa M Zaina

Lisa M. Zaina
Wallman Strategic Consulting, LLC
1300 Connecticut Ave., NW, Suite 1000
Washington, DC 20036
(202) 347-4964

December 31, 2001

CERTIFICATE OF SERVICE

I, Lisa M. Zaina, of Wallman Strategic Consulting, LLC, 1300 Connecticut Ave., NW, Suite 1000, Washington, DC, 20036, hereby certify the foregoing "Petition for Reconsideration" was served on this 31st day of December, 2001, by first-class, U.S. mail, postage prepaid to the following parties:

Lisa M. Zaina

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Dorothy Attwood, Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C450
Washington, DC 20554

Qualex International
445 12th Street, SW
Room CY-B402
Washington, DC 20554 (diskette)