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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

TO: The Commission

PETITION FOR RECONSIDERATION

THE WESTERN ALLIANCE

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Dated: December 31, 2001

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SUMMARY

The Western Alliance requests reconsideration and reversal of the Commission's determination in the MAG Order to make the new Interstate Common Line Support ("ICLS") mechanism portable to Competitive Eligible Telecommunications Carriers ("CETCs") on the basis of the per-line costs incurred by incumbent rate-of-return carriers.

The Commission has adopted the ICLS mechanism to replace the Carrier Common Line ("CCL") charge that rate-of-return carriers have used since the mid-1980s to recover certain of their actual loop-related costs of providing exchange access. The CCL charge was based upon actual interstate loop costs that rate-of-return carriers were not able to recover from their end users via Subscriber Line Charges ("SLCs") due to affordability and universal service considerations.

A portable ICLS mechanism will bestow large and unwarranted financial windfalls upon CETCs with services, facilities and costs that differ significantly from those of the rate-of-return carriers whose per-line ICLS dollars they would receive. These financial windfalls will be particularly large and unwarranted with respect to wireless CETCs that have elected not to provide equal access and other exchange access services to which the ICLS mechanism applies and that have been exempted from many regulatory requirements that increase actual common line costs and ICLS dollars of rate-of-return carriers. A portable ICLS mechanism will create regulatory arbitrage that will promote only artificial, non-economic "competition" that will dwindle or disappear once the windfall "portable" support is limited, reduced or terminated. In the meantime, it will skew the competitive playing field in a grossly discriminatory fashion against the rural

telephone companies that have provided quality services at affordable rates to Rural America for decades, and in favor of entities seeking windfall universal service dollars for a few years. In the short run, the portable ICLS mechanism will injure not only the rural telephone companies subjected to artificial "competition," but also the telecommunications carriers and customers that must contribute the universal service dollars showered upon the CETCs. In the long run, it will require rural residents to pay much higher monthly service rates for telecommunications services that no longer will be comparable to those available to their urban and suburban counterparts.

The Western Alliance is not opposed to the provision of universal service support to CETCs on the basis of their own reasonable and prudent actual costs. However, the Western Alliance vigorously opposes the offering or provision to CETCs of "portable" support that is based upon the much higher actual reasonable and prudent costs of incumbent local exchange carriers.

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TO: The Commission

PETITION FOR RECONSIDERATION

The Western Alliance, by its attorney, hereby requests reconsideration of a portion of the Commission's 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, FCC 01-304, released November 8, 2001 ("MAG Order"). The order appeared in the Federal Register on November 30, 2001, 66 Fed. Reg. 59,719 (November 30, 2001).

Specifically, the Western Alliance seeks reconsideration and reversal of the Commission's determination in the MAG Order to make the new Interstate Common Line Support ("ICLS") mechanism portable to Competitive Eligible Telecommunications Carriers ("CETCs") on the basis of the per-line costs incurred by incumbent rate-of-return

carriers. A portable ICLS mechanism will bestow large and unwarranted financial windfalls upon CETCs: (a) that do not offer substantially similar exchange access services as the underlying rate-of-return carriers; (b) that do not construct and maintain substantially similar common line facilities as the underlying rate-of-return carriers; and (c) that do not incur substantially similar costs as the underlying rate-of-return carriers. These financial windfalls will be particularly large and unwarranted with respect to wireless CETCs that have elected not to provide equal access and other exchange access services and that have been exempted from many regulatory requirements that increase the common line and other costs of rate-of-return carriers. A portable ICLS mechanism will create regulatory arbitrage that will promote only artificial, non-economic "competition" that will dwindle or disappear once the windfall "portable" support is limited, reduced or terminated. In the meantime, it will skew the competitive playing field in a grossly discriminatory fashion against the rural telephone companies that have provided quality services at affordable rates to Rural America for decades, and in favor of entities seeking windfall universal service dollars for a few years. In the short run, the portable ICLS mechanism will injure not only the rural telephone companies subjected to artificial "competition," but also the telecommunications carriers and customers that must contribute the universal service dollars showered upon the CETCs. In the long run, it will require rural residents to pay much higher monthly service rates for telecommunications services that no longer will be comparable to those available to their urban and suburban counterparts.

The Western Alliance wishes to make it absolutely clear that it is not opposed to the provision of universal service support to CETCs on the basis of their own

reasonable and prudent actual costs -- when and where such CETC costs exceed the national average loop cost or other applicable thresholds. However, the Western Alliance vigorously opposes the offering or provision to CETCs of "portable" support that is based upon the actual reasonable and prudent costs of incumbent local exchange carriers ("ILECs") rather than those of the CETCs themselves. Because ILECs have been forced to incur significant costs to comply with federal and state regulatory requirements (including, but not limited to, equal access, carrier of last resort obligations, rate regulation, service quality standards, and regulatory audits) that are not applicable to most CETCs, the provision of support to CETCs on the basis of ILEC costs will almost always confer a significant financial windfall upon the CETCs. This discriminatory and inequitable practice must be terminated.

I.

The Western Alliance

The Western Alliance is a consortium of the member companies of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents about 250 rural telephone companies operating west of the Mississippi River.

The Western Alliance filed comments in this proceeding on February 26, 2001 and reply comments on March 12, 2001. It generally supported the interstate access reform proposals in the Multi-Association Group ("MAG") Plan, including the proposed Rate Averaging Support ("RAS") mechanism for Path A carriers participating in the National Exchange Carrier Association ("NECA") pools. The Western Alliance focused its initial comments upon: (a) retention of the Path B option that would allow some

ILECs to remain subject to rate-of-return regulation; (b) the need for the term of the modified system to be long enough to accommodate the investment cycles of small carriers; (c) opposition to the addition of an "X-factor" or other consumer productivity dividend to the proposed Path A incentive mechanism; and (d) the need for inclusion of the proposed Low End Adjustment mechanism to encourage small carriers to adopt incentive regulation.

Western Alliance members are generally small local exchange carriers serving sparsely populated, high-cost rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange. Their revenue streams differ greatly in size and composition from those of the price cap carriers. Most members generate revenues much smaller than the national telephone industry average, and rely upon interstate access and universal service dollars for 45-to-70 percent of their revenue base.

At the same time, Western Alliance members incur per-customer facilities and operating costs far in excess of the national average. Not only does their small size preclude their realization of significant economies of scale, but also they serve remote and rugged areas where the cost per loop is much higher than in urban and suburban America. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these high cost rural areas, the Western Alliance member not only is the carrier of last resort, but also is the sole telecommunications provider ever to show a sustained commitment to invest in and serve the area.

Western Alliance members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under a wide variety of climate and terrain conditions, ranging from the deserts of Arizona to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

II.

Interstate Common Line Support Is Designed Solely To Recover Actual ILEC Loop Costs

The Commission has adopted the new Interstate Common Line Support ("ICLS") mechanism to replace the Carrier Common Line ("CCL") charge that rural telephone companies and other rate-of-return carriers have been using since the mid-1980s to recover certain loop-related costs of providing access to their networks for long distance and other interstate services. The Commission has indicated that it will size the new ICLS mechanism to provide support equal to the interstate loop costs that the affected rate-of-return carriers do not recover through revenues from increased Subscriber Line Charges ("SLCs") and other applicable common line charges. MAG Order, paras. 130 and 142.

The Commission has stated that its goal, since 1983, has been for ILECs to recover substantially all of their non-traffic-sensitive common line costs on a flat-rated basis from their end users. MAG Order, para. 33. However, because of affordability and universal service concerns, the Commission has not been able to accomplish its goal wholly via increases in monthly, flat SLC charges. This is particularly true in the

Western states, where the applicable monthly SLC charges would have to be increased by $50-to-$100 or more per line in many rural areas.[1] Rather, the Commission instead capped the SLCs, and permitted rural rate-of-return carriers to recover the major portion of their actual common line costs via per-minute CCL charges.

The Commission subsequently decided that the CCL charge was an "inefficient cost-recovery mechanism and implicit subsidy" which is not sustainable in a competitive market. MAG Order, para. 62. However, it is notable that the "implicit subsidy" to which the Commission objects is one from high-volume users to low-volume users of interstate long distance services. Id. at paras.23, 62. In other words, **the CCL charge does not constitute an explicit or implicit "subsidy" to rate-of-return ILECs from interexchange carriers or other entities.** Rather, the SLC and CCL charges were designed to act together to recover those portions of the actual, embedded costs of the loops of rate-of-return ILECs that are allocable to interstate access services.

Hence, the new ICLS mechanism replaces the CCL revenues that are presently used to recover a substantial portion of the actual loop costs of rural ILECs. In fact, the ICLS has been designed expressly to enable rate-of-return ILECs to recover the portion of their actual interstate access loop costs that is not recovered via their SLC charges. The detailed mechanism adopted by the Commission for the provision of projected common line revenue requirements to the ICLS Administrator, and the subsequent "true up" of these projections on the basis of actual costs, shows that ICLS dollars are to be

[1] See MAG Order, para.12, where the Commission noted that its own forward-looking economic cost model shows that the cost of providing a local loop in a rural area may be approximately one hundred times greater than the cost in an urban area. The Commission expressly referred to a model cost of $866.27 for a loop in a Wyoming wire center, compared to a cost of $9.97 in a New York City wire center. It noted further that overhead cost adjustments would greatly increase this cost difference.

distributed to rate-of-return ILECs solely and entirely on the basis of their actual costs. MAG Order, paras. 162-69.

III.

Interstate Common Line Support Must NOT Be Given To CETCs On The Basis Of An ILEC's Actual Costs

As Commissioner Kevin J. Martin noted in his Separate Statement to the MAG Order, the Commission's policy of using universal service support as a means of creating "competition" in high cost areas raises serious questions and concerns. Among other things, it offers unwarranted and inappropriate windfall gains to potential CETC entrants, creates regulatory arbitrage situations that produce inefficient CETC entry and uneconomical CETC rates, places at a significant competitive disadvantage the very same rural ILECs that have long provided quality services at affordable rates to rural residents, and requires urban and rural consumers throughout the country to pay increased universal service "contributions" to fund the Commission's experiment. In the end, the people injured the most by this artificial "competition" are rural residents who will be forced to pay much higher rates for lower-quality telecommunications services when their long-established carriers are weakened or driven from the market, and when the new entrants leave or jack up their rates as the portable universal service support gravy train is limited, reduced or terminated.

A.

There Is No Reasonable Basis For Making The New ICLS Mechanism Portable To CETCs

There is no reason or purpose why ICLS dollars should be made portable to CETCs. The ICLS mechanism is based upon the actual loop costs incurred by each rate-of-return ILEC to provide interstate exchange access. Moreover, the ICLS mechanism is replacing the CCL revenues previously employed to permit rate-of-return ILECs to recover the same actual loop costs. The Commission itself has indicated that "[l]ike the CCL charge, Interstate Common Line Support will provide support for rate-of-return carriers to the extent that SLC caps do not permit them to recover their common line revenue requirements" and "will help to ensure the availability of high quality telecommunications service at affordable and reasonably comparable rates after the CCL charge is phased out." MAG Order, para. 120.

Yet, the Commission ordered per-loop equivalents of Interstate Common Line Support to be made portable to CETCs with virtually no discussion or analysis. MAG Order, para. 151. It merely cited to Section 54.307 of its Rules pertaining to the separate and distinct high-cost loop support mechanism, and to the principle of "competitive neutrality" that it previously added to the Universal Service principles adopted by Congress in Section 254(b) of the Communications Act. Id. In another portion of the order, the Commission stated merely that it was replacing "the CCL charge with explicit support that will be available to all eligible telecommunications carriers on an equitable, non-discriminatory, and competitively neutral basis." Id., para. 120.

B.

A Portable ICLS Mechanism Will Bestow Large And Unwarranted Financial Windfalls Upon Wireless CETCs

In Rural America today, there is virtually no competition between wireline rate-of-return ILECs and wireline competitive local exchange carriers (CLECs). Whereas some wireline CLECs have sought to provide facilities-based competition in towns served (or, more accurately, underserved) by price cap ILECs, the economics of facilities-based competition in the vast majority of the rural study areas of rate-of-return ILECs have not been attractive, and are not expected to become attractive within the foreseeable future.

However, there has been a substantial effort by affiliates of Western Wireless Holding Co. and other Commercial Mobile Radio Service ("CMRS") carriers to obtain CETC designations in rural telephone company service areas and to compete for the portable, per-line universal service support of rural ILECs. See, e.g. Memorandum Opinion And Order (Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota); FCC 01-283, released October 5, 2001; Memorandum Opinion And Order (Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming), 16 FCC Rcd 48 (2000); Petition of WWC Holding Co., Inc. f/k/a Minnesota Cellular Corporation for Designation as an Eligible Telecommunications Carrier, 2000 Minn. PUC LEXIS 34 (2000); Western Wireless Holding Co., Inc.'s Application for Designation as an Eligible Telecommunications Provider, 2001 Colo. PUC LEXIS 31 (2001).

Giving portable per-line support based upon the costs of rural ILECs to competing wireless CETCs is unreasonable, discriminatory and inequitable because the wireless CETCs operate in a wholly different regulatory and cost environment.

For example, Section 332(c)(8) of the Communications Act exempts CMRS providers from the requirement to provide equal access to common carriers for the provision of telephone toll services, unless the Commission requires unblocked access (which it has not). As a result, wireless CETCs do not need to make the investments and incur the expenses necessary to furnish originating exchange access to multiple interexchange carriers. Moreover, wireless CETCs are able to generate substantial additional profits unavailable to their ILEC competitors (who must provide equal access) by reselling the services of a single toll carrier (generally, at highly favorable terms and volume discounts) to the captive audience comprised of all of their wireless customers.

Likewise, Section 332(c)(3) of the Communications Act and various Commission orders exempt wireless CETCs from federal and state rate regulation, as well as state entry regulation. These exemptions relieve wireless CETCs of substantial expenses that rural ILECs incur for state certification, rate cases, cost studies, tariff filings, state and NECA audits, mandatory accounting systems and other regulatory requirements imposed upon rural ILECs. Some of these regulatory expenses are allocated to the interstate access revenue requirement recovered via the CCL and its successor ICLS mechanism. Hence, a portable ICLS will produce a wholly inequitable situation wherein wireless CETCs will receive substantial "portable" ICLS dollars attributable to the regulatory obligations and expenses of rural ILECs from which the recipient wireless CETCs themselves have been exempted.

Section 3(26) of the Communications Act expressly excludes wireless CETCs and other CMRS carriers from the definition of "local exchange carrier" unless the Commission determines that they should be included in such definition (which it has not done, to date). This exclusion means that wireless ETCs are not persons "engaged in the provision of telephone exchange service or exchange access," and that they are not subject to the costs and obligations imposed upon local exchange carriers in Section 251(b) of the Communications Act or upon incumbent local exchange carriers in Section 251(c) thereof.

C.

A Portable ICLS Mechanism Will Not Be "Competitively Neutral," But Rather Will Discriminate Harshly Against Rural ILECs

The Commission has claimed that the principle of "competitive neutrality" it added to the Section 254(b) universal service principles adopted by Congress mandates that universal service support mechanisms and rules "should neither unfairly advantage nor disadvantage one provider over another." MAG Order, para. 151. However, it is difficult to see how the proposed "portable" ICLS mechanism can do anything other than advantage wireless CETCs who will receive windfall ICLS dollars based upon the costs of exchange access services they do not provide and of regulatory requirements from which they are exempt. It is equally difficult to see how the portable ICLS mechanism can do anything but disadvantage rate-of-return ILECs. These carriers not only will lose ICLS dollars intended to replace the CCL charge they have been using to recover their actual interstate access loop costs, but also will see competing CETCs obtain these dollars without incurring the related costs. Rather than being "competitively neutral," it

is difficult to see how the proposed "portable" ICLS mechanism could be any more inequitable or discriminatory in the way that it favors CETCs over rural ILECs.

The portable ICLS mechanism will create regulatory arbitrage very similar to that the Commission recently sought to eliminate in its Order On Remand And Report And Order (Intercarrier Compensation for ISP-Bound Traffic), FCC 01-131, released April 27, 2001 ("ISP-Bound Traffic Order"). The windfall dollars offered to wireless CETCs will create incentives for inefficient entry by wireless carriers that have more interest in obtaining portable universal service and ICLS dollars based upon ILEC costs than in providing viable local telephone competition. ISP-Bound Traffic Order at para. 21.

D.

Certifications And Disaggregation Will Not Alleviate The Adverse Impacts Of A Portable ICLS Mechanism

The Commission's proposed Section 254(e) certifications do not constitute an efficient or effective means to prevent wireless CETCs from pocketing windfall ICLS support. Rather, annual self-certifications from wireless CETCs that are not subject to federal or state rate regulation, and that do not file federal or state cost studies, are not likely to receive significant analysis or scrutiny. Whereas the Commission has tariff cost support, NECA cost studies and audits, and other data against which to compare the universal service support and costs of ILECs, it can only examine and verify the universal service costs and expenditures of wireless CETCs by conducting special audits. The Western Alliance expects that limitations upon the Commission's resources will preclude vigorous and effective audits of the portable ICLS dollars and other universal service support given to wireless CETCs.

Disaggregation of ICLS and other universal service support may reduce some of the harm of portable support, but will not eliminate the inequities and discrimination of distributing support to one carrier on the basis of another carrier's costs.

E.

ICLS Dollars Should Be Distributed Only On the Basis Of Each Recipient ETC's Own Actual Costs

The efficient, equitable, nondiscriminatory and competitively neutral way to calculate and distribute ICLS and other universal service support is to require each ETC (including each CETC) to submit its own cost study demonstrating and justifying its own reasonable and prudent expenses of providing the services eligible for support, and to subject itself to appropriate audits of its cost data by the USF Administrator and the Commission. Where an ETC's costs exceed the appropriate threshold, it should receive ICLS and/or other universal service support on the basis of its own costs. Requiring all ETCs (including wireless CETCs) to produce such cost studies and subject themselves to such audits is neither unreasonable nor unfair, for no carrier has an absolute right to universal service support. Rather, all carriers must be required not only to demonstrate that they qualify for ICLS and other types of universal service support, but also to demonstrate the amount of support they should receive on the basis of their own actual costs.

F.

Rural Customers Will Be The Ultimate Victims Of A Portable ICLS Mechanism

In the end, it is rural customers who will be injured the most by experiments in artificial competition fueled by windfall universal service dollars. A competitor that enters a rural market for a primary or substantial purpose of taking portable universal service support from the pre-existing ILEC is not likely to remain in the market, or to maintain its rates at affordable level, when the portable universal service support is limited, reduced or terminated. By tilting the competitive playing field in favor of new wireless CETC entrants and against existing rural ILECs, the Commission appears to be trying to place the responsibility for the future telecommunications service of many rural areas in the hands of wholly unproven newcomers. It is ignoring the substantial evidence in its own study area waiver files that rural ILECs have long been the only entities willing to serve many rural areas, and that they have been leaders in bringing state-of-the-art facilities and services at affordable rates to their rural service areas. During the last decade, rural ILECs have acquired and upgraded nearby rural exchanges that had long been neglected by larger carriers. See e.g. Union Tel. Co. and US West Communications, Inc., 12 FCC Rcd 1840 (1997) (upgrade to digital loop carrier, install new cable, replace aerial wire); Pend Oreille Tel. Co. and GTE Northwest, Inc., 12 FCC Rcd 63 (1997) (upgrade to fiber, offer single party service, purchase CLASS-capable digital switch); and Accipiter Communications, Inc. and US West Communications, Inc., 11 FCC Rcd 14962 (1996) (install fiber, digital switch, extend service to unserved areas). These Commission files also show that the excellent local reputations and established service records of the acquiring rural ILECs resulted in vigorous support for these

exchange acquisitions by state and local governments, local business communities, and affected rural customers.

Rural rate-of-return carriers have long been the carriers-of-last-resort for many of the most sparsely populated and difficult-to-serve portions of Rural America. At this dangerous time in the Nation's history, it is important to note that rural telephone companies long have been leaders in the provision of facilities essential to public safety and the national defense. During recent years, their efforts in these critical areas have included the upgrade of their networks to implement emergency public safety response systems (911 and/or E-911), and to comply with Communications Assistance for Law Enforcement Act ("CALEA") requirements.

It is absolutely disheartening that the Commission continues to disregard the superior service record of rural ILECs, and to "reward" them for decades of extraordinary public and customer service by offering windfall universal service support based upon their costs to wireless CETCs. If these experiments in producing artificial competition succeed in weakening or destroying rural ILECs, rural residents will be forced to pay much higher rates in the future for telecommunications services that will be much lower in quality than those presently offered by their rural ILECs.

IV.

Conclusion

The Commission should reconsider the MAG Order and eliminate the provision of portable ICLS support to CETCs on the basis of the actual costs of rate-of-return carriers. To the extent that any carrier receives ICLS support, it should obtain such

support solely and entirely on the basis of its own actual loop costs that are allocated to the interstate access services that it actually provides.

Respectfully submitted,
THE WESTERN ALLIANCE

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Dated: December 31, 2001

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Petition for Reconsideration" were served by first class U.S. mail or hand delivery on this 31st day of December, 2001, to the persons listed below:

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