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

COMMENTS OF GENERAL COMMUNICATION, INC.

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SUMMARY

In the *MAG Order & FNPRM*, the Commission seeks further comment on how best to design an incentive regulation plan for non-price cap LECs. The Commission correctly rejected the MAG incentive regulation plan as not properly balancing the interests of incumbent local exchange carriers (incumbent LECs) and their access customers. The Commission correctly recognized that previous proposals retained all benefits for the incumbent LECs, allowing incumbent LECs to move closer to a monopoly price.

GCI believes that to be credible and rational, any incentive regulation plan must:

- Start from an appropriate starting point, including an opportunity to review cost studies for the study areas entering incentive regulation;
- Share benefits between carriers and customers through a combination of "up front" reductions, which should reflect initial, stockpiled efficiencies, and year-over-year reductions, which should reflect anticipated productivity improvements;
- Not attempt to impose a "one-size-fits-all" solution on all non-price cap LECs;
- Bifurcate upfront and year-over-year reductions between loop and switching/transport to reflect the fact that switching has experienced much more significant cost declines that loop technology; and
- Move incumbent LECs to an ICLS per line formula, rather than the residual revenue requirement formula in the *MAG Order & FNPRM*.

With respect to pricing flexibility, the Commission should learn from its experience with price cap LEC pricing flexibility. In particular, the Commission should:

- Not permit carriers that remain in rate-of-return regulation, rather than moving to incentive regulation, to participate in pricing flexibility;

- Require waiver of any incentive plan low-end adjustment as a condition of entry into pricing flexibility;
- Treat channel terminations as loops, and do not give them Phase I or Phase II pricing flexibility based on collocations;
- Only give pricing flexibility to special access, other than channel terminations, and dedicated transport when access customers have real alternatives, and the incumbent LEC is not creating impediments to migration by imposing unnecessary charges or through choice of network configurations.
- Recognize that , after the *CLEC Access Charge Order,* there is no rational basis for Phase II pricing flexibility for local switching, switched transport, or carrier-purchased loops or channel terminations.
- Limit the opportunities for discrimination and anticompetitive premature "lock-in" of customers through long term contracts before competition has taken hold by limiting volume and term discounts and contract tariffs to not more than three years.

The Commission should also consolidate Long Term Support with the Interstate Common Line Support, which now serves the same function.

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COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (GCI) applauds the Commission for moving expeditiously to adopt the basic access charge and universal service reforms in the *MAG Order and Further Notice of Proposed Rulemaking*.[1] Although we have taken issue with a few points,[2] the Commission in the main hit the nail on the head—removing implicit universal service subsidies from access charges, instituting an explicit universal service support mechanism to continue to provide support for high cost areas where necessary, and maintaining the full portability of

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1 Second Report & Order & Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613 (2001) (hereinafter "*MAG Order & FNPRM*").

2 *See* Rural Consumer Choice Coalition Petition for Reconsideration, *In re Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers & Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, & 98-166 (filed Dec. 28, 2001), at 1-2 (requesting four specific changes to the *MAG Order & FNPRM*).

support that mimics the competitive result that would occur in the market in the absence of subsidies. These reforms were appropriate, and took a major step forward—nearly six years after the passage of the Telecommunications Act of 1996—to harmonize the introduction of competition and the protection of universal service in areas served by rate-of-return carriers.

As compared with other access customers, GCI is disproportionately affected by the changes the Commission makes to interstate access charges and universal service for non-price cap carriers. GCI offers facilities-based long distance, facilities-based local and wireless telephone service in Alaska, as well as rolling out high-speed Internet access service, primarily over its own facilities, both in Alaska's urban areas and in the bush.[3] Alaska is served only by non-price cap LECs, so all of the originating and terminating access charges GCI and its customers pay in Alaska are affected by proposed changes to the access charge regime for non-price cap LECs. Moreover, as a CLEC serving a substantial number of customers in Anchorage, and launching service in Fairbanks and Juneau, predominantly using unbundled loops combined with GCI's own switching and transport, GCI is acutely aware of when it still must rely on incumbent LECs to provide necessary services and the potential for anticompetitive behavior, including discrimination and premature customer "lock-in" as competition is introduced.[4] With the exception of an undersea cable running between Alaska and the continental U.S. and some Internet access services provided to schools and libraries in Arizona, GCI does not today offer service outside of Alaska.

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[3] GCI also provides cable television services in Alaska.

[4] GCI ultimately plans, where possible, to migrate its local telephone customers to telephony provided over its cable system. GCI's cable systems, however, will not reach all its local telephone customers.

I. INTRODUCTION & SUMMARY

In the *MAG Order & FNPRM*, the Commission seeks further comment on how best to design an incentive regulation plan for non-price cap LECs. The Commission correctly rejected the MAG incentive regulation plan as not properly balancing the interests of incumbent local exchange carriers (incumbent LECs) and their access customers. The Commission correctly recognized that previous proposals retained all benefits for the incumbent LECs, allowing incumbent LECs to move closer to a monopoly price.

GCI believes that to be credible and rational, any incentive regulation plan must:

- Start from an appropriate starting point, including an opportunity to review cost studies for the study areas entering incentive regulation;
- Share benefits between carriers and customers through a combination of "up front" reductions, which should reflect initial, stockpiled efficiencies, and year-over-year reductions, which should reflect anticipated productivity improvements;
- Not attempt to impose a "one-size-fits-all" solution on all non-price cap LECs;
- Bifurcate upfront and year-over-year reductions between loop and switching/transport to reflect the fact that switching has experienced much more significant cost declines that loop technology; and
- Move incumbent LECs to an Interstate Common Line Support (ICLS) per line formula, rather than the residual revenue requirement formula in the *MAG Order & FNPRM*.

With respect to pricing flexibility, the Commission should learn from its experience with price cap LEC pricing flexibility. In particular, the Commission should:

- Not permit carriers that remain in rate-of-return regulation, rather than moving to incentive regulation, to participate in pricing flexibility;
- Require waiver of any incentive plan low-end adjustment as a condition of entry into pricing flexibility;
- Treat channel terminations as loops, and do not give them Phase I or Phase II pricing flexibility based on collocations;
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- Recognize that , after the *CLEC Access Charge Order,* there is no rational basis for Phase II pricing flexibility for local switching, switched transport, or carrier-purchased loops or channel terminations.
- Limit the opportunities for discrimination and anticompetitive premature "lock-in" of customers through long term contracts before competition has taken hold by limiting volume and term discounts and contract tariffs to not more than three years.

The Commission should also consolidate Long Term Support with the Interstate Common Line Support, which now serves the same function.

II. ANY INCENTIVE PLAN FOR RATE-OF-RETURN LECS MUST FAIRLY APPORTION EFFICIENCY AND PRODUCTIVITY GAINS BETWEEN ILECS AND ACCESS CUSTOMERS

In the *MAG Order & FNPRM*, the Commission properly rejected the Multi-Association Group's (MAG) proposal for incentive regulation. As the Commission found, that proposal did not "properly balance carrier and customer interests given the current regulatory environment for those carriers."[5] That plan failed to "recogni[ze]...the productivity gains that historically have been realized by the telephone industry."[6] The rates generated under that plan would not have been just and reasonable, and "all the benefits of productivity or efficiency improvements would accrue to the carrier in the form of higher returns and none of the benefits [would] accrue to access customers."[7] As AT&T observed, had the MAG incentive regulation proposal been in place for the entire rate-of-return LEC group from 1995-2000, total revenue charged by price cap LECs would have been over $600 million dollars higher in 2000 than under rate-of-return.[8]

GCI believes that there are several keys to creating a credible and workable incentive regulation system. First, incentive regulation must start from a proper rate. In particular, rate-of-return carriers other than average-schedule companies seeking to enter incentive regulation must file a tariff, immediately prior to entering into incentive regulation, that reflects compliance with all outstanding Commission orders and that is preceded by the filing of detailed cost information sufficient to allow interexchange carriers and other access purchasers to determine whether there are specific rate elements that the Commission must investigate prior to using those rates as a basis for incentive regulation. Interexchange carriers and other access customers should be given a substantial period of time—at least 45 days—to review such cost information. In addition, the FCC should also require carriers seeking to enter incentive regulation to file their most recent intrastate cost studies with the FCC. This will allow access customers to ensure that carriers are not "double dipping" by filing inconsistent cost studies in the states and at the FCC.

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5 *MAG Order & FNPRM*, 16 FCC Rcd at 19704-5 (¶ 217).

6 *Id*. at 19705 (¶ 218).

7 *Id*.

8 Letter of Patrick H. Merrick, AT&T, to Magalie Roman Salas, Secretary, FCC, dated August 2, 2001, at Table 3A (Line "Excess Revenue"), CC Dockets No. 00-256, 96-45, 98-77, 98-166. *See also* Attachment A.

GCI's experience with ACS Communications Inc. (ACS) illustrates why such a pre-incentive regulation review is necessary. In January 2001, the Commission found that ACS had been exceeding its prescribed rate of return, in violation of Section 201(b), by illegally allocating ISP traffic costs to the interstate jurisdiction rather than the intrastate jurisdiction,[9] and illegally counting only one, rather than two, dial equipment minutes of use (DEMs) for each minute of intraoffice calls.[10] The Commission subsequently directed ACS to change its separations treatment of ISP minutes, which then should then have required ACS to change its rate.[11] ACS, however, has never changed its rate, it elected not to file an annual tariff at the July 2001 annual tariff, and filed tariffs effective January 1, 2002 based on those same rate levels.[12] These illegal actions resulted in ACS earning a more than 50% rate-of-return on the traffic-sensitive category for the 1999-2000 Monitoring Period.[13] Moreover, GCI discovered that ACS had submitted cost studies in state ratemaking proceedings that classified ISP traffic differently for the purposes of separations than the federal cost studies ACS had submitted.[14] There must be a reasonable opportunity—beyond the scant 15-day (or as little as 7-day if no rates increase) tariff-opposition periods provided every two years for rate-of-return carriers—to detect and correct this type of lawless behavior must before a carrier enters incentive regulation.

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[9] *See* Memorandum Opinion & Order, *In re General Comm. Inc. v. Alaska Comm. Sys. Holdings, Inc.*, 16 FCC Rcd 2834, 2850 (¶ 39) (2001)(*GCI v. ACS*), *appeal pending sub nom. ACS v. FCC*, No. 01-1059 (D.C. Cir.).

[10] *Id.* at 2853 (¶ 48).

[11] *Id.* at 2864 (¶ 79).

[12] These tariffs are now under investigation. *See* Order on Reconsideration, *In re Dec. 17, 2001 MAG Access Charge Tariff Filings*, CCB/CPD File No. 01-23, 2002 FCC LEXIS 511, at ¶ 5 (Jan. 30, 2002) (releasing 52 of the 54 December 2001 access tariffs filed by rate-of-return ILECs, but continuing further investigation of ACS' tariff and the interrelated provisions of the NECA tariff).

[13] *See* Petition of GCI to Suspend & Investigate, *In re ACS of Anchorage, Inc. Tariff FCC No. 1*, Transmittal No. 6, DA 01-2748 (filed Dec. 20, 2001), at 14-17 & n.41.

[14] *See id.*

For some incumbent LECs, access consumers never have an opportunity to review study area cost studies. All Alaska incumbent LECs participate in the NECA Common Line pool. Only ACS of Anchorage files its own traffic sensitive tariff. The rest of the Alaska incumbent LECs, including all other ACS study areas, participate in the NECA Traffic Sensitive pool. Companies in the NECA pools do not file cost studies at the FCC. Failure to provide a transparent opportunity to review costs prior to entry into incentive regulation will only ensure that incentive regulation begins on the wrong foot—from a rate level that is unjustifiably high.

In addition, the Commission should automatically adjust the initial revenue requirement for incentive regulation if monitoring reports detect overearnings for the periods immediately preceding entry into incentive regulation. As the Commission has explained, it is not possible to know whether a tariff will, as a whole, yield an overearnings violation prior to the conclusion of the monitoring period.[15] Thus, it will be important to allow rates to be reinitialized to a corrected starting point in the event of overearnings.

Second, as the Commission recognized, the incentive regulation plan must provide for an adequate means of sharing benefits between the carrier and its customers. This should be accomplished through a combination of "up front" revenue requirement reductions and an ongoing productivity adjustment. The "up front" revenue reduction should be viewed as sharing the "low hanging fruit" of the carrier's stockpiled efficiency improvements. The ongoing productivity adjustments should reflect a more sustainable year-over-year estimate of efficiency improvements, and should hold revenue growth below the growth that could be expected under continued rate-of-return regulation. By bifurcating these two concepts, the FCC would avoid making the year-over-year number so large that it created a disincentive to entering incentive

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15 *GCI v. ACS*, 16 FCC Rcd. at 2856-7 (¶57).

regulation, while at the same time would recognize the reality that a number simply set to an appropriate year-over-year level would likely over-reward carriers in the early years.

Such a price adjustment mechanism would not and should not deprive incumbent LECs of all benefits of incentive regulation. To the extent incentive regulation is voluntary for at least a subset of rate of return carriers, an overly harsh productivity adjustment would simply ensure that no carrier voluntarily participated. Incumbent LECs should be allowed to keep some of the efficiencies they find, but they should only retain a fair portion of those efficiencies, not all of them.

Third, incentive regulation does not have to be "one-size-fits-all" and indeed, a "one-size-fits-all" approach is unlikely to capture the diversity among ILECs. There will likely need to be multiple incentive regulation plans, perhaps banded by aggregate revenues of all rate-of-return systems owned by the same holding company or all lines served by rate-of-return systems owned by the same holding company. This would allow the Commission to reflect the fact that the largest holding companies, including ACS—which is the fourth largest rate-of-return carrier by lines served—may have greater scale economies than very small cooperatives. Averaging the two would likely simply result in the cooperative opting out and the larger carriers receiving a windfall. Application of the incentive regulation formula should be applied on a study area basis, to avoid shifting revenues and costs between study areas (and states).

Fourth, incentive regulation for rate-of-return companies should avoid the structure of pre-CALLS price cap regulation that assumed that productivity improvements would occur equally with respect to loop, switching and transport. As the Commission recognized in the *CALLS Order*, the application of a uniform productivity assumption drove down loop recovery, while maintaining high switched-access prices:

> When price caps were first implemented, initial rates were targeted to produce the same return across all baskets. Currently, however, price cap LECs' basket earnings are significantly higher for traffic sensitive services than for common line services. This is consistent with our observation that the current traffic sensitive rate structure provides price cap LECs with more revenue when demand increases, regardless of whether costs have increased, resulting in higher earnings.[16]

Indeed, based on 1999 ARMIS data, Commission staff calculated approximate rates of return of 85 percent for the traffic sensitive basket, 20 percent for the trunking basket, and 15 percent for the common line basket.[17] The *CALLS Order* accordingly focused access charge reductions on switched-access rates.[18] It would be better for the Commission to keep that experience in mind, and to recognize that an incentive plan should treat common line recovery differently than switching and transport recovery, with switching and transport expected to generate much greater year-over-year efficiencies than loop investment.

This would address concerns GCI previously raised with respect to the MAG's proposed incentive regulation plan. Publicly available data shows that costs per loop decreased in recent years as loops have grown: between 1994 and 1998, the average unseparated cost per loop declined one percent per year on a nationwide basis while inflation increased by approximately 1.9 percent per year.[19] By contrast, the FCC's regression analysis conducted with respect to modeling switch costs for the Hybrid Cost Proxy Model shows that switch costs—which

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[16] Sixth Report & Order in CC Docket Nos. 96-262 & 94-1, Report & Order in CC Docket No. 99-249, & Eleventh Report & Order in CC Docket No. 96-45, *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, 15 FCC Rcd 12962, 13033 (¶ 171) (2000) (hereinafter "*CALLS Order*"), *aff'd in part & rev'd in part*, *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

[17] *Id.* at 13033 n. 376.

[18] *Id.* at 13025 (¶ 151).

[19] Comments of General Communication, Inc., CC Dockets No. 00-256, 96-45, 98-77 & 98-166 (filed Feb. 26, 2001).

represent the majority of traffic sensitive costs—declined approximately 10 percent per year relative to inflation from 1989 to 1996.[20] Bifurcating the productivity adjustment for loops from the productivity adjustment for switches would reflect this underlying reality.

Fifth, the Commission must sever the link between incumbent LEC total revenue and ICLS support, and move to a system in which the ICLS support for all LECs—incumbent or competitive—is distributed on a revenue per line basis. The Interstate Access Universal Service Support provided in areas served by the price cap LECs, for example, computes a uniform support per line that is provided to the ILEC or the CLEC, whichever carrier wins the customer.[21] The ICLS support per line should grow no faster than the total permitted revenue per line for common line, less revenue collected through end user charges. Full portability of support – which is the same result that would occur in an unsubsidized market and as occurred when a CLEC won the subsidizing customer under implicit subsidies – must be maintained.

III. PRICING FLEXIBILITY MUST BE CAREFULLY IMPLEMENTED ONLY WHEN THERE ARE ACTUAL ALTERNATIVES TO ILEC FACILITIES, AND ONLY FOR CARRIERS UNDER INCENTIVE REGULATION

The Commission must be very careful in considering any proposed pricing flexibility for non-price cap LECs because of the potential for cost-shifting between customers with alternatives and those that lack competitive choices, and because of the potential for anticompetitive harm from premature pricing flexibility. As the Commission recognized when it adopted the *Price Cap LEC Pricing Flexibility Order*,[22] if granted prematurely, pricing flexibility

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[20] *See* Tenth Report & Order, *Federal-State Joint Board on Universal Service*, 14 FCC Rcd 20156, 20281, 20287-89 (¶¶ 294, 311-315) (1999).

[21] 47 C.F.R. § 54.807(a).

[22] Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant*

could enable an incumbent LEC to (1) exclude new entrants from their markets, or (2) increase rates to unreasonable levels."[23] Thus, the Commission attempted to grant pricing flexibility only when "competitors have made irreversible investments in the facilities needed to provide the services at issue, thus discouraging incumbent LECs from pursuing exclusionary strategies."[24]

A. No Pricing Flexibility for Carriers That Remain Under Rate-of-Return Regulation

When the Commission adopted pricing flexibility for price cap LECs, it did not have to confront the situation in which the carriers seeking pricing flexibility were under rate of return regulation rather than incentive regulation. Indeed, it found that in order to revise price cap regulation in light of pricing flexibility, the LEC simply had to remove demand associated with services offered pursuant to contract tariffs.[25] The service band indicies remained to limit the potential for cross-subsidization between different types of services within the same basket.[26]

With the exception of ATU Telecommunications' (owned by ACS) request for a waiver of certain part 69 rules to permit volume and term discounts with respect to local switching and the TIC, the FCC has not generally granted what it has termed Phase I or Phase II pricing

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Carrier in the Phoenix, Arizona MSA, 14 FCC Rcd 14221 (1999) ("*Price Cap LEC Pricing Flexibility Order*").

23 *Id*. at 14257.

24 *Id*. at 14258.

25 *Id.* at 14302-3.

26 *See id*.

flexibility to rate-of-return LECs.[27] Even the ATU waiver was extremely limited in scope, and it did not cover special access or dedicated transport.[28]

The Commission should not extend pricing flexibility to carriers that are not participating in some kind of incentive regulation plan. Incentive regulation reduces the ability of a carrier to engage in cost-shifting and other forms of anticompetitive cross-subsidization. On the other hand, the complexity of rate-of-return regulation makes it extremely difficult to remove both the costs and the demand from rate-of-return formulas, especially when the carrier does not conduct its own cost studies and file its own tariffs, but participates in the NECA pools.[29]

However, even with respect to companies that are not in the pools, it can be very difficult to distinguish costs for price regulated services from costs for non-price regulated services. As the Commission pointed out in the *Price Cap LEC Pricing Flexibility Order*, a carrier would have an incentive to underallocate costs to contract tariff services "in order to minimize measured earnings."[30] The Commission noted, "Once a LEC has removed a significant amount of demand associated with contract tariff offerings from price cap regulation . . . its incentive to underallocate the costs of non-price cap services and the effects of such underallocation will be much greater."[31] The difficulty in policing cross-subsidization when contract tariffs or volume

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27 Phase I pricing flexibility permits a carrier to enter into contract tariffs and to establish volume and term discounts in addition to providing service through a generally available tariff, provided it meets certain other conditions. 47 C.F.R. § 69.727(a). Phase II relief eliminates Part 69 rate structure requirements and price regulation, and it permits filing of tariff revisions on one day's notice. 47 C.F.R. § 69.727(b).

28 Order, *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, 15 FCC Rcd 20655 (2000) ("*ATU Waiver*").

29 ATU (now ACS of Anchorage) is a cost company that is not a member of the NECA traffic-sensitive pool. The FCC imposed a condition on ACS that it calculate switching and TIC rates for its generally available tariff as if all minutes and costs, including contract tariff minutes and costs, were included.

30 *Price Cap LEC Pricing Flexibility Order*, 14 FCC Rcd at 14305.

31 *Id*.

and term discounts are applied to rate-of-return companies makes it much more likely that an incumbent LEC could raise rates to unreasonable levels, especially for customers that lack scale or purchasing power.

Accordingly, the Commission should not permit any carrier that remains in rate of return regulation to obtain pricing flexibility. In addition, should the Commission adopt a low end adjustment mechanism within the incentive regulation plan for non-price cap LECs, it must, for the same reasons, require any carrier seeking pricing flexibility to waive the low end adjustment for the study area within which it seeks pricing flexibility.[32]

B. Special Access and Dedicated Transport Services

In evaluating possible "triggers" for pricing flexibility for special access and dedicated transport services,[33] the Commission should consider whether substitute facilities are truly available, or whether substantial impediments remain to the use of alternative, non-ILEC trunking facilities. In the *Price Cap LEC Pricing Flexibility Order*, the Commission set Phase I and Phase II triggers based on the percentage of end offices within an MSA in which there was at least one unaffiliated collocator, with a lower percentage for services other than channel terminations and a higher percentage for channel terminations.[34]

While collocation makes some sense as a test for when a competitor can substitute its own facilities, it should not be used as the sole criterion, as the Commission did in the *Price Cap LEC Pricing Flexibility Order*. First, collocators who are not offering competitive transport services must be excluded from the determination of whether there are competitive trunk

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32 *Id*.

33 These services include entrance facilities, transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office, and direct-trunked transport, and special access services. 47 C.F.R. §§ 69.710-711.

34 *Id*.

providers available in a central office, as the Commission subsequently made clear for price cap LECs.[35] A party, for example, might take collocation space, for example, to collocate its own DSLAM so that it can offer DSL services. In addition, collocation must actually be offered at the necessary point of interconnection, such as at the tandem with respect to a CLEC-provided entrance facility.

Second, the incumbent LEC should be precluded from charging collocated providers for facilities that they do not use. For example, when GCI collocates in an ACS central office and provides special access using its own fiber terminating in that collocation space, it is nonetheless charged for two channel terminations, with one to function as an entrance facility even though GCI needs no entrance facility.[36] The same is true under the NECA tariff. As a second example, GCI cannot avoid NECA and ACS entrance facility charges with respect to transport even when the GCI collocates in the end office and provides transport over its own facilities.[37] These are nothing more than blatant efforts to raise rivals costs, and because they are impediments to dedicated transport and special access competition, they must be removed before an incumbent LEC can receive Phase I or Phase II pricing flexibility with respect to these services.

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[35] *See* Memorandum Opinion and Order, *BellSouth Petition for Phase I Pricing Flexibility for Switched Access Services*, 16 FCC Rcd. 5040, 5046 (¶ 14) (2001).

[36] *See* ACS of Anchorage, Inc., Tariff FCC No. 1, § 7.2.1(A), Original Page 7-16 ("This charge will apply even if the customer designated premises and the serving wire center are collocated in a Telephone Company building"); National Exchange Carrier Assoc., Inc., Tariff F.C.C. No. 5, § 7.2.1(A), 2d Revised, p. 7-13.1 ("These charges will apply even if the customer designated premises and the serving wire center are collocated in a Telephone Company building").

[37] *See* ACS of Anchorage, Inc., Tariff FCC No. 1, § 6.1.3(A)(1), Original Page 6-8 ("This charge will apply even if the customer designated premises and the serving wire center are collocated in a Telephone Company building"); National Exchange Carrier Assoc., Inc., Tariff F.C.C. No. 5, § 6.1.3(A)(1), 3rd Revised, p. 6-8.1 ("These charges . . . will apply even if the customer designated premises and the serving wire center are collocated in a Telephone Company building").

Third, pricing flexibility should not be granted with respect to transport that cannot be avoided because of network design configurations. For example, incumbent LECs are making greater use of remote switches. When the IXC cannot interconnect at the remote to pick up traffic, the IXC is forced to purchase transport from the ILEC to reach the host. Phase II pricing flexibility is wholly inappropriate with respect to these facilities because the IXC has not alternative source of supply, and granting Phase I pricing flexibility when there is no competition simply creates the prospect of premature "lock-in" of large customers, without any competitive necessity.

Fourth, the standard for pricing flexibility for channel terminations that the Commission adopted for price cap LECs was hopelessly flawed. Where a channel termination connects customer premises to the CLEC's collocation space in the ILEC central office, there is no alternative source of supply for that link simply because of collocation. The *Price Cap LEC Pricing Flexibility Order* created a test that was a non-sequitur – by basing the trigger on the percentage of end offices with collocation, the Commission did not measure where there were potential alternatives to the ILEC channel termination, but only whether there were potentially alternatives to the ILEC trunk that would have been connected to that channel termination.[38] It would be wholly arbitrary and capricious to replicate that error with respect to the non-price cap LECs. It would be better and more rational to subject channel terminations to the same pricing flexibility triggers as switched loops, as the only difference is that one is connected to a multiplexer or another channel termination and the other is connected to a switch.

Fifth, an MSA is probably not an appropriate geographic unit when measuring whether pricing flexibility is appropriate for a non-price cap LEC. Alaska, for example, has only one

[38] *See* 47 C.F.R. § 69.711.

MSA – Anchorage. Because non-price cap LECs are smaller than the RBOCs, and serve much more geographically focused areas study areas, it would make much more sense to apply any pricing flexibility triggers on no larger than a study area basis. This would also correspond most closely with the actual availability of alternative facilities. In some Alaska communities, the local network is comprised only of loop, switch and entrance facilities, and any pricing flexibility metric must be flexible enough to accommodate this diversity.

Sixth, even when pricing flexibility is granted, there need to be some safeguards against unreasonable discrimination in the guise of a volume and term discount. For example, it would be possible for ACS to discriminate against other carriers by offering itself a very low price in return for commitment to all its volume for a very long term. If this is a term that is not commercially reasonable for other carriers, it becomes a vehicle for a preferential price. In order to prevent this problem, GCI suggests that the Commission limit the term on volume and term discounts to no more than three years.

Seventh, as the Commission determined in the *Price Cap LEC Pricing Flexibility Order*, growth discounts should be prohibited. The Commission found no affirmative benefit to growth discounts in the record before it.[39] These carry a substantial risk of premature "lock-in" and discrimination.

GCI does not oppose Phase I or Phase II pricing flexibility for special access (other than channel terminations) and direct trunk transport under the appropriate circumstances. But those circumstances must be ones in which GCI has an actual competitive alternative to the ILEC services, and in which GCI is not being forced to purchase services that it does not need. Otherwise pricing flexibility will simply yield an anticompetitive, unregulated monopolist.

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[39] *Price Cap LEC Pricing Flexibility Order*, 14 FCC Rcd at 14294.

C. Loop, Switch and Common Transport

GCI believes that there is absolutely no basis for granting Phase II pricing flexibility with respect to local switching and common transport. In the Commission's *CLEC Access Charge Order*,[40] the Commission place price limits on originating and terminating access charges by CLECs by limiting the circumstances under which a CLEC could file access tariffs. The economics that justified the imposition of those limits on CLEC access charges apply equally with respect to incumbent LEC charges and preclude pricing flexibility:

> First, although the end user chooses her access provider, she does not pay that provider's access charges. Rather, the access charges are paid by the caller's IXC, which has little practical means of affecting the caller's choice of access provider (and even less opportunity to affect the called party's choice of provider) and thus cannot easily avoid the expensive ones. Second, the Commission has interpreted section 254(g) to require IXCs geographically to average their rates and thereby to spread the cost of both originating and terminating access over all their end users. Consequently, IXCs have little or no ability to create incentives for their customers to choose CLECs with low access charges. Since the IXCs are effectively unable either to pass through access charges to their end users or to create other incentives for end users to choose LECs with low access rates, the party causing the costs – the end user that chooses the high-priced LEC – has no incentive to minimize costs.[41]

There is also no justification, at least with respect to purchases by carriers, to grant Phase II pricing flexibility with respect to loops and channel terminations before there are actual, alternative connections to the home or business available to an alternate CLEC. Even a CLEC such as GCI is still dependent on the incumbent LEC to supply loops. With respect to switched access, the Commission has previously found that "UNEs are irrelevant to carriers using switched access services because UNEs are only a substitute for access services in the special circumstance where the carrier is also providing local service to the end-user customer."[42]

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40 Seventh Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* 16 FCC Rcd 9923 (2001) (citations omitted).

41 *Id.* at 9935.

42 *CALLS Order*, 15 FCC Rcd at 13030 (¶ 164).

The Commission should also exercise care even with respect to Phase I pricing flexibility for end user charges, local switching and transport. Provided that the Commission has been able to erect adequate safeguards against cross-subsidization within the incentive regulation system, the greatest competitive dangers are that the incumbent LEC will use pricing flexibility to price discriminatorily in favor of itself and to attempt to lock in customers prior to full competition. Again to avoid these pitfalls, GCI suggests limiting volume and term discounts under Phase I pricing flexibility to not more than three years in length. This will both ensure that customers are not locked in for an unreasonably long period of time, and that the incumbent LEC cannot structure a long term contract with its own affiliate as a means of implementing unreasonably discriminatory rates.

IV. LONG TERM SUPPORT SHOULD BE CONSOLIDATED WITH ICLS

In the FNPRM, the Commission tentatively concluded that Long Term Support (LTS) should be merged with Interstate Common Line Support (ICLS). We agree. As the Commission noted, LTS no longer serves a purpose independent for the ICLS.[43] Moreover, the cost-spreading function that used to be served by pooling – spreading high costs over both higher and lower cost companies – is now performed by the ICLS. [44] Accordingly, it is not nearly as critical to give carriers an incentive to remain in the NECA pool.

Moreover, it is both unnecessary and unwise for the Commission to continue to provide artificial incentives for pooling. Pooling will most likely continue, even with the end of its risk-spreading function in common line, because pooling is a much more efficient means of tariff administration for very small LECs. Pooling should be neither artificially encouraged nor discouraged, but allowed to exist where it is efficient.

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43 *MAG Order & FNPRM*, at 19724 (¶ 272).

V. CONCLUSION

GCI urges the Commission to move forward to design an incentive regulation plan for non-price cap LECs that is both fair to access consumers and to the LECs. To do this requires both some upfront access reductions, and a year-of-year reduction that recognizes that different portions of the network have different levels of potential efficiency gains. In designing a pricing flexibility plan, the Commission must be attentive to the potential for cost shifting and to use flexibility to "lock in" customers and to discriminate in favor of the ILEC's affiliates. Finally, LTS should be consolidated with ICLS.

Respectfully submitted,

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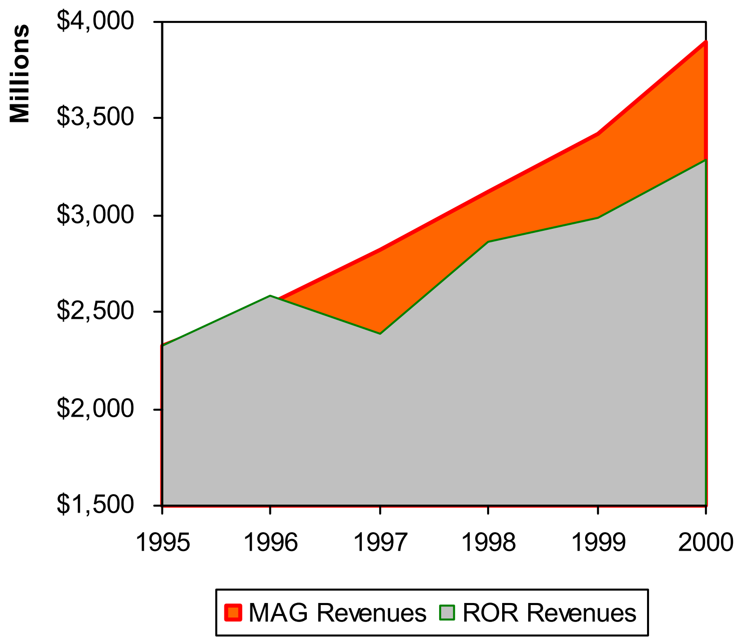
44 *Id*. at 19726 (¶ 275).

ATTACHMENT A

MAG Incentive Plan -- Inflated Charges

ILEC REVENUES
MAG (Simulated 1995-2000) vs. ROR
(Actual 1995-2000)



- MAG Incentive Plan accelerates revenue growth v. ROR status quo, increasing profits without any cost cutting.
- Increased revenues are paid from USF.
- Cost cutting only adds to profits.

Data Source: AT&T ex parte, dated Aug. 2, 2001, CC Dockets No. 00-256, 94-45, 98-77, 98-166

CERTIFICATE OF SERVICE

I, Karen R. Stephens, do hereby certify that a copy of the foregoing Comments of General Communication, Inc. was served this 14th day of February, 2002 via first-class mail, postage prepaid, upon the following parties:

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