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

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

COMMENTS OF  
THE NEBRASKA RURAL INDEPENDENT COMPANIES

Introduction

The Nebraska Rural Independent Companies (the "Companies"),<sup>1</sup> by their attorneys, respectfully submit these comments in response to a Further Notice of Proposed Rulemaking ("FNPRM") wherein the Federal Communications Commission (the "Commission") sought comment on the development of an alternative regulation plan for rate-of-return ("ROR") carriers. The Companies appreciate the opportunity to respond to the FNPRM and intend to

<sup>1</sup> Companies submitting these collective comments include: 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., Stanton Telephone Co., Inc. and Three River Telco.

focus these comments on the questions raised relative to the optionality aspects of an alternative regulatory plan for ROR carriers.

### **The Scope of Optionality**

The Companies believe that any alternative regulation plan adopted by the Commission for ROR carriers should be optional with respect to only the smaller carriers with access lines below a predetermined threshold. In the FNPRM, the Commission stated that “[g]iven the wide variations among rate-of-return carrier operating conditions, we believe it would be extremely difficult to establish a mandatory alternative regulatory plan for all rate-of-return carriers.”<sup>2</sup> An alternative regulation plan optional to only the smaller ROR carriers and mandatory to the larger carriers would deliver the benefits of incentive regulation to carriers and customers where productivity gains can actually be realized.

Typically, the markets served by the smallest carriers in the nation experience little or no access line growth. Without adequate demand growth, small carriers serving sparsely populated rural areas (as do the Companies) have no opportunity to experience productivity increases or sufficient economies of scale and would have difficulty recovering their costs under incentive regulation. Furthermore, adoption of an alternative regulation plan optional for only the smaller ROR carriers would be consistent with the Commission’s approach used with Tier 1 carriers in the price cap regime. In its *LEC Price Cap Order*, the Commission decided to allow the small and mid-size Tier 1 companies to choose price cap regulation on a voluntary basis.<sup>3</sup>

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<sup>2</sup> *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 (rel. November 8, 2001) (“*MAG Order*”) at para. 227.

<sup>3</sup> *See Second Report and Order in CC Docket No. 87-313*, FCC 90-314 (rel. October 4, 1990) (“*LEC Price Cap Order*”).

## **Criteria Proposed by the Companies for Determining Which Carriers Should be Subject to Alternative Regulation on a Mandatory Basis**

The Companies believe that a reasonable criteria for determining the class of carriers to be subject to an alternative regulation plan on a mandatory basis is a threshold number of access lines at a holding company level. Utilizing the number of access lines at the holding company level as the criteria takes into account the buying power that can be exerted by the company. Moreover, at that level, the larger companies would not be apt to have the unpredictable investment patterns as do the smaller companies. In addition, access lines counts have historically been used in federal statute to determine various classes of carriers.<sup>4</sup>

The Companies believe that a reasonable holding company threshold for mandatory incentive regulation would perhaps be 100,000 access lines. By including ROR carriers with 100,000 or more access lines at the holding company level, the benefits of incentive regulation would be extended to about 95 percent of the nation's telephone subscribers.<sup>5</sup> Further, by adopting a plan made mandatory for only the largest ROR carriers, the Commission would be focusing such regulation where productivity gains can realistically be achieved. An alternative regulation program made optional for the smaller carriers would also ensure customers of high-cost, rural companies that incentives to invest under ROR regulation will be maintained, whereas smaller carriers may reduce their investment and quality of service in response to the increased risk of alternative regulation.

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<sup>4</sup> For instance, the Telecommunications Act of 1996 (the "Act") defines "rural telephone company" as "a local exchange carrier operating entity to the extent that such entity . . . (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; . . ." 47 U.S.C. § 153.

<sup>5</sup> This proportion includes customers of the nation's largest local exchange carriers, which are currently operating under price cap regulation, a form of incentive regulation.

## **Conclusion**

If the Commission should determine that implementation of an incentive regulation program for ROR carriers would generally be consistent with Section 201(b) of the Act and in the public interest, it should also determine that the smallest carriers (*i.e.* those with under 100,000 access lines) and their customers would not stand to benefit from such a program. The Commission should not impose an incentive regulation plan on the smaller ROR carriers because many of these carriers do not experience sufficient demand growth to experience productivity gains. Therefore, such carriers would experience a greater risk of insufficient cost recovery, which would in turn likely lead to decreased investment and reduced quality of service in the areas served by such carriers.

Dated: February 13, 2002.

Respectfully submitted,

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.,  
Stanton Telephone Co., Inc. and  
Three River Telco (the "Companies")

By:



Paul M. Schudel, No. 13723

WOODS & AITKEN LLP

301 South 13th Street, Suite 500

Lincoln, Nebraska 68508

(402) 437-8500

(402) 437-8558 Facsimile