

**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)	CC Docket No. 96-45
Universal Service)	
)	
Access Charge Reform for Incumbent)	CC Docket No. 98-77
Local Exchange Carriers Subject to)	
Rate-of-Return Regulation)	
)	
Prescribing the Authorized Rate of Return)	CC Docket No. 98-166
For Interstate Services of Local Exchange)	
Carriers)	

**PLAINS RURAL INDEPENDENT COMPANIES' REPLY TO
OPPOSITION TO PETITIONS FOR RECONSIDERATION**

I. INTRODUCTION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. Section 1.429, and its Public Notice (Report No. 2526) published in 67 Fed. Reg. 4430, the Plains Rural Independent Companies (the "Companies")¹ submit this reply to opposition to petitions for reconsideration filed by the Rural Consumer Choice Coalition (the "RCC Coalition") of the Federal Communications Commission ("Commission") Second Report and Order

¹ Companies submitting this opposition 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, Schaller/ANC Telephone Company, Southeast Nebraska Telephone Co., Stanton Telephone Co., Inc. and Three River Telco.

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 (“*MAG Order*”).

II. THE COMMISSION SHOULD NOT REALLOCATE TRANSPORT INTERCONNECTION CHARGE (“TIC”) AMOUNTS ALLOCATED TO LOCAL SWITCHING IN THE *MAG ORDER* TO COMMON LINE, AS THE TIC DOES NOT CONTAIN COMMON LINE COSTS.

The RCC Coalition petitioned the Commission to reconsider the provisions in the *MAG Order* addressing the reallocation of the TIC. The RCC Coalition maintained that there was no basis in the record for the Commission to shift recovery of rate-of-return (“ROR”) carriers’ costs to local switching,² and recommended that the Commission should spread TIC recovery that was assigned to local switching in the *MAG Order* to either common line alone, or to common line, transport, and special access.³ As the Companies clearly documented in their petition for reconsideration, however, costs associated with common line have not been allocated to the TIC or to transport rates.⁴ Further, the RCC Coalition’s argument that the treatment of the TIC for price cap carriers should be replicated for ROR carriers is without merit, as ROR carriers must base their

² See *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, and *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Rural Consumer Choice Coalition Petition for Reconsideration, filed Dec. 28, 2001 at 16.

³ *Id.* at 18.

⁴ See *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, and *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Petition for Reconsideration of the Plains Rural Independent Companies (“*Plains Petition*”), filed Dec. 31, 2001 at 10-11.

rates on costs, whereas price cap carriers' rates are not directly based on current costs. In addition, the "residual TIC," or the TIC that remained after the Commission had reassigned TIC costs to other access elements, is larger for ROR carriers. This is because the Commission did not order ROR carriers to reassign as many categories of costs from the TIC to other elements as it did for price cap carriers. Therefore, it would be inappropriate to use the Commission's treatment of the residual TIC for price cap carriers as a precedent for ROR carriers, as the residual TIC does not contain the same costs for the two groups of carriers.⁵ For the foregoing reasons, the Companies object to the RCC Coalition's petition and urge the Commission to reject it.

A. The Separations Freeze On Allocation Factors Does Not Affect The Ability Of The Joint Board And The Commission To Implement Changes To Separations To Address Issues Raised In The Access Charge Reform Order.⁶

The RCC Coalition asserts that the Commission, in the *Separations Freeze Order*,⁷ ". . . adopted an up to five-year interim freeze of Part 36 *category relationships* and jurisdictional cost allocation factors. . . ."⁸ This assertion is misleading and incorrect

⁵ In addition to the fact that the remaining TIC for ROR carriers is larger because the Commission did not reassign as many categories of costs for ROR carriers as for price cap carriers, the distribution of costs contained within the TIC is different for the two groups of carriers. As discussed in footnote 28, ROR carriers have few tandem switches relative to price cap carriers, thus, the reassignment of tandem-switching costs did not materially affect the TIC for ROR carriers, whereas tandem-switching was a significant proportion of the TIC for price cap carriers. Further, as noted by the Commission in the *MAG Order* at para. 101, the cost of providing transport in less densely populated areas is higher than the costs reflected by transport rates derived from special access rates. This phenomenon results in the remaining TIC being much larger for ROR carriers, as these carriers serve predominantly rural, less densely populated areas of the country.

⁶ See *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Transport Rate Structure and Pricing*, CC Docket No. 91-213, and *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order, FCC 97-158 ("Access Charge Reform Order") (rel. May 16, 1997).

⁷ See *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 01-162 ("*Separations Freeze Order*") (rel. May 22, 2001).

⁸ *RCC Opposition* at 22. (emphasis added)

with respect to ROR carriers. The *Separations Freeze Order* states “[i]n this Report and Order, we adopt the Joint Board’s recommendation to freeze the Part 36 category relationships and jurisdictional allocation factors for price cap carriers and *the allocation factors only for rate-of-return carriers.*”⁹ Thus, it is clear that the freeze only applies to the allocation factors for ROR carriers. The Commission indicates that jurisdictional allocation factors are the percentage relationships that allocate costs assigned to Part 32 accounts for jointly used plant between the interstate and intrastate jurisdictions.¹⁰

The allocation of costs through the separations process between private line and switched services, which the Commission identified as one of the reasons that costs remained in the TIC after the reassignment of certain costs, is not related to jurisdictional allocation factors. Thus, even though jurisdictional allocation factors are frozen for ROR carriers at present, changes could be effectuated in the separations process that allocates costs between switched and private line services. Furthermore, there is no clear evidence that the issues regarding separations raised by the Commission in the *Access Charge Reform Order* were referred to the Federal-State Joint Board on Separations (“Joint Board”), contrary to the suggestion of the RCC Coalition.¹¹ In fact, while some issues raised in the *Access Charge Reform Order* were cited by paragraph number in the *Separations Reform NPRM*,¹² the issue of the separations process assigning costs

⁹ *Separations Freeze Order* at para. 9. (emphasis added)

¹⁰ *Id.* at footnote 21.

¹¹ *See RCC Opposition* at 22.

¹² *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 97-354 (“*Separations Reform NPRM*”) (rel. Oct. 7, 1997).

differently to private line and switched services, which the Commission had indicated it would refer to the Joint Board,¹³ was not identified in the *Separations Reform NPRM*.

Given the evidence concerning the *Separations Freeze Order* presented above, the RCC Coalition's assertion that ". . . the Commission could no longer assume that it would correct separations distortions through separations reform, as it had just entered it *Separations Freeze Order* lasting for five years,"¹⁴ is without merit. There is no record that the issue of the separations process assigning costs differently to private line and switched services was ever referred to the Joint Board as the Commission had indicated it would do.¹⁵ Furthermore, because the separations freeze is only on jurisdictional allocation factors for ROR carriers, the Joint Board could address the issue of the separations process assigning costs differently to private line and switched services at any time, as this process is not related to jurisdictional allocation factors. In fact, the Commission indicated that "[w]e also agree with the Joint Board that the comprehensive review of the separations process must continue during the freeze, and we thus commit to working with the Joint Board on a continuing basis during the freeze."¹⁶ This statement indicates that both the Joint Board and the Commission intend to continue to examine separations issues during the freeze; the freeze is not intended to stop activity with regard to separations reform. Therefore, prior to taking any action to reassign TIC costs for ROR carriers, the Commission should refer to the Joint Board the issue of the separations process assigning costs differently to private line and switched services, as it had

¹³ See *Access Charge Reform Order* at para. 225.

¹⁴ *RCC Opposition* at 23.

¹⁵ See *Access Charge Reform Order* at para. 225.

¹⁶ *Separations Freeze Order* at para. 33.

indicated that it would do in the *Access Charge Reform Order*¹⁷. Only after this referral and consequent Joint Board recommendation occurs can the Commission validly reassign TIC costs for ROR carriers.

B. The Commission's Lack Of Evidence As To The Nature Of Costs Contained In The TIC Does Not Justify The Same Treatment Of TIC Costs For ROR Carriers As The Commission Implemented For Price Cap Carriers.

The RCC Coalition cites instances in the *Access Charge Reform Order* in which the Commission indicated that it did not have definitive evidence as to the nature of the costs contained in the residual TIC for price cap carriers, and asserts that “new evidence” should be presented that all residual transport costs were transport-related.¹⁸ This call for “new evidence” is unsubstantiated and contrary to long-standing Commission understanding of the origin of TIC-related costs for ROR carriers, as demonstrated by the Companies in their petition for reconsideration. Furthermore, while the Commission reallocated TIC costs for price cap carriers without a definitive record as to the nature of TIC costs and therefore did not have evidence to indicate that the costs had been properly reassigned, this does not mean that it is appropriate to follow this same course for ROR carriers. Price cap carriers’ rates are not directly based on their costs, thus, the reassignment of price cap carriers’ costs does not directly impact such carriers’ rates as does the reallocation of costs for ROR carriers. However, ROR carriers must base their rates directly on their costs, thus, the Commission should obtain definitive evidence prior

¹⁷ See *Access Charge Reform Order* at para. 225.

¹⁸ See *See 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 Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, *Rural Consumer Choice Coalition Opposition to Petitions for Reconsideration (“RCC Coalition Opposition”)* (filed Feb. 14, 2002) at 23.

to reassigning costs, which the Commission did not have in this instance. Indeed, the record cited by the Commission in the *MAG Order* does not indicate that any common line costs are contained in the TIC, in fact, common line is never mentioned as a possible component of TIC costs. Furthermore, the Companies have demonstrated in their petition that the TIC contains costs that are only traffic sensitive and are not related to common line.¹⁹

The RCC Coalition indicates that in the *MAG Order*, the Commission concluded that it could not determine the proportion of costs still contained in the TIC that were transport related, thus it reallocated some of the TIC costs to transport charges.²⁰ However, the evidence cited by the Commission as the basis for reallocating the TIC to all access categories does not indicate that common line costs are contained in the TIC.

The Commission stated that:

. . . remaining costs recovered by the TIC result from at least two different causes affecting transport services: (1) the separations process assigns costs differently to private line and switched services, resulting in the costs allocated to special access being lower than those allocated to the transport category, even though the two services use comparable facilities; and (2) the cost of providing transport in less densely populated areas is higher than that reflected by transport rates derived from special access rates.²¹

Nothing in this description of costs remaining in the TIC indicates that the TIC contains any common line costs. Rather, it reflects an understanding by the Commission that remaining costs recovered by the TIC for ROR carriers are indeed transport-related, as the Companies and similar ROR carriers serve less densely populated areas and thus have

¹⁹ See *Plains Petition* at 7-8.

²⁰ See *RCC Coalition Opposition* at 23.

²¹ *MAG Order* at para. 101.

higher transport costs than reflected by special access rates.²² Therefore, the Commission's spreading of TIC costs to common line, in the absence of specific evidence that the TIC contained common line costs and an understanding that the TIC in fact resulted from special access rates not reflecting the cost of transport in rural areas, is completely unwarranted.

As the Companies indicated in their petition, the TIC was designed to recover transport costs assigned to the local transport element that would not be recovered by the actual transport rate elements.²³ The Companies also explained the derivation of trunking and circuit equipment costs that are allocated and included in the cost of interstate transport elements.²⁴ The RCC Coalition did not dispute either of these findings, yet the RCC Coalition insists that the Companies have not cited "new evidence" to indicate that all remaining TIC costs are transport related. The Companies have provided such evidence, although no burden exists to do so in the first place. However, the Companies believe that this proof and the Commission's own statements are more than sufficient to demonstrate that all remaining TIC costs are transport related. Therefore, the Commission has no basis for treating remaining TIC costs for ROR carriers in the same manner that it did for price cap carriers.

²² The use of special access rates as a surrogate for transport rates in rural areas has resulted in the TIC representing the majority of transport cost recovery for many ROR carriers. For some of the Companies, the TIC represents almost three-quarters of their transport cost recovery. *See* Letter of Lisa Zaina to Magalie Roman Salas, Re: Ex Parte Submission, CC Docket Nos. 96-45 and 00-256 (filed Aug. 7, 2001).

²³ *See Plains Petition* at 4-5.

²⁴ *Id.* at 7-8.

C. The Companies' Position On Removal Of Tandem-Switching Costs From The TIC Is Consistent With Commission Action Taken In The Access Charge Reform Order To Address The *CompTel I*²⁵ Decision.

The RCC Coalition suggests that the Companies' request to reconsider the *MAG Order* provisions addressing reallocation of the TIC should be rejected because the Companies ignore judicial holdings since the D.C. Circuit's decision in *CompTel I*.²⁶ However, as the Companies will demonstrate below, the Commission action of moving the portion of tandem-switching costs that was allocated to the TIC back to tandem-switching, which the Commission did take in response to *CompTel I*, is consistent with the Companies' position on tandem-switching costs in the TIC.

In *CompTel I*, the AT&T Corporation ("AT&T") argued that the then existing allocation of twenty percent of the residual cost to the tandem switch produced tandem-switching rates that were considerably below what a cost-based rate would be. The court found that the Commission had not justified the TIC, in that 80 percent of the allocated cost of tandem switching was recovered from all interexchange carriers, both tandem-switch and dedicated transport users, upon the basis of their usage. The court remanded the TIC to the Commission, and instructed it to determine an actual tandem switching cost.

As the RCC Coalition indicated, the Commission addressed the *CompTel I* decision in its *Access Charge Reform Order*.²⁷ By reallocating the 80 percent of tandem switching costs that had been recovered through the TIC back to the tandem-switching

²⁵ See *Competitive Telecommunications Association V. FCC*, 87 F.3d 522 (D.C. Cir. 1996) ("*CompTel I*").

²⁶ See *RCC Coalition Opposition* at 19.

²⁷ *Id.* at 20.

rate, the Commission largely addressed the concerns that AT&T had raised in the *CompTel I* case.²⁸ The Companies, in their petition for reconsideration, noted that tandem-switching costs that were reallocated to the TIC should not be included in TIC rates, as tandem-switching is not a transport-related element.²⁹ Therefore, the Companies position with regard to the treatment of tandem-switching does not ignore the judicial holdings in the *CompTel I* decision, but rather is consistent with the Commission's action on *CompTel I*, which was to move tandem-switching costs that had been allocated to the TIC back to tandem-switching.

III. CONCLUSION

The Companies urge the Commission to reject the RCC Coalition's petition to reassign TIC costs that the MAG Order had allocated to local switching to common line, or to a combination of common line, transport, and special access. There is no evidence to suggest that the remaining TIC for ROR carriers contains any common line costs, therefore, reassignment of any TIC costs to common line is unwarranted and inappropriate. Furthermore, the Commission identified current separations rules as a possible reason for costs remaining in the TIC. A review of these rules should be conducted prior to any reassignment of TIC costs. The Companies continue to recommend that TIC costs should not be arbitrary reassigned, and that the Commission

²⁸ See *Access Charge Reform Order* at para. 218. This reassignment did not materially affect the recovery of costs for the vast majority the Companies – or most ROR carriers across the country. This is due to the fact that most ROR carriers do not have tandem switches, as these carriers do not have sufficient traffic volume to justify having a tandem switch. Thus, most ROR carriers do not offer tandem-switching.

²⁹ See *Plains Petition* at 9.

should follow the process outlined in the Companies petition for reconsideration to properly handle TIC cost reallocation.³⁰

Respectfully submitted,

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³⁰ Id. at 15-16.

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 "Reply to Opposition to Petitions for Reconsideration" was served on this 25th day of February 2002, to the following parties:

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