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

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION REPLY COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] hereby files its reply comments in response to the Federal Communications Commission's (Commission's or FCC's) Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding.[2]

[1] NTCA is a non-profit corporation established in 1954 and represents 545 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Telecommunications Act of 1996 (Act). They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] *In the Matter of the Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket 00-256; *Federal-State Joint Board on Universal Service, CC Docket* 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*

I. AN INCENTIVE REGULATION PLAN MUST BE FULLY OPTIONAL FOR ALL ROR CARRIERS

In its initial comments, NTCA specifically requested that if the FCC adopts an incentive regulation plan for rate-of-return (ROR) carriers, the plan should be fully optional for all ROR carriers. Optionality must be an essential component of any incentive regulation plan that the Commission adopts in this proceeding.[3] Determining a single alternative regulation plan that establishes the proper incentives for more than 1,300 diverse ROR carriers spread throughout all regions of the United States will be extremely difficult, if not impossible.

Mandatory incentive regulation provides no guarantee that rural consumers will be better off. Rate-of-return regulation has served rural consumers well for over 40 years and has provided rural customers with competitive, affordable, high-quality telecommunications services that are comparable and, in some instances, better than their urban counterparts. The Commission should therefore act prudently and allow ROR carriers the option of maintaining ROR regulation and the ability to choose the exact time when, if at all, to transition into a new alternative regulation plan.

A significant portion of the Telecom Industry agrees. The National Rural Telecom Association (NRTA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the United States Telecom Association (USTA) all state that "adopting a plan that is optional for all carriers, should be the Commission's single most important principle" ... because "only an optional plan

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of Return for Interstate Services for Local Exchange Carriers, CC 98-166, FCC 01-304, (rel. November 8, 2001).

will modernize regulation where incentive regulation can benefit consumers as well as, carriers, without jeopardizing the Act's commitments to comparable rural and urban services and prices or the evolving capabilities in rural areas."[4] Similarly the Nebraska Rural Independent Companies proposes that "any regulation plan adopted by the Commission for ROR carriers should be optional with respect to only small carriers with access lines below a predetermined threshold [100,000 access lines]."[5] Western Alliance also supports a fully optional plan and states that it is impossible "to devise an alternative regulation mechanism capable of dealing flexibly with the diverse, lumpy investment and expense patterns and the lack of scales of economies of 250 Western Alliance members, much less that approximately 1,200 rural telephone companies."

ALLTEL, CenturyTel, Madison River Communications and TDS also recommend that any incentive regulation plan adopted by the Commission should be fully optional, not only on a company basis, but also on a study area basis, and that incentive regulation should be transitional over a five-year period.[6] They state that "there is too much variability, both in the size of rate-of-return carriers and in the areas they serve, to require any rate-of-return carrier today to commit, in total, to a single alternative regulatory plan."[7] Other mid-sized local exchange carriers agree that it is "virtually impossible to create a single regulatory plan that will meet the needs of all rate-of-return"

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[3] Optionality must include a carrier's free choice to transition into an alternative regulation plan at any point in time, as well as the carrier's choice to remain under rate-of-return regulation as a cost company, an average schedule company, and a tariff filing company under Parts 61 and 69 of the Commission's rules.
[4] NRTA, OPASTCO and USTA Initial Comments at 8.
[5] Nebraska Rural Independent Companies Initial Comments at 2.
[6] ALLTEL, CenturyTel, Madison River Communications and TDS Telecommunications Initial Comments at 3-8.
[7] *Id.* at 4.

carriers and that the FCC "should not make the mistake of adopting the all-or-nothing rule for rate-of-return carrier incentive regulation."[8]

Moreover, the consultants emphasize that any incentive regulation plan that the Commission may adopt must be fully optional for ROR carriers. Telecom Consulting Associates states that "rational, reasonable path to take in this proceeding demands complete optionality" and absent the "voluntary nature of any alternative to ROR regulation, the Commission would be negating the benefits of RLECs serving areas historically forsaken by large carriers."[9] ICORE concurs stating that a totally optional incentive regulation plan will benefit a number of "ILECs, their customers, the IXCs and the Commission itself."[10] And, GVNW further states that the ROR regulation option must continue to be included as a key element of any future rules adopted by the Commission in this FNPRM.[11] Even AT&T recommends that optionality should be a part of any incentive regulation plan for carriers with 50,000 access lines or less.[12]

WorldCom, Sprint and CUSC, however, claim that the FCC should eliminate rate-of-return regulation because it is inconsistent with competition and creates incentives for inefficiency.[13] They are wrong and out-of-step with reality. Rate-of-return regulation has helped rural LECs grow to meet the goals of the Act by providing competitive, reliable and affordable telecommunications services to rural America for more than four decades. Furthermore, competition in rural America ten years ago was strikingly different from what it is today. Rural carriers today are faced with the daunting challenge

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[8] Independent Telephone & Telecommunications Alliance (ITTA) Initial Comments at 6.
[9] Telecom Associates Initial Comments at 2-3.
[10] ICORE Initial Comments at 11.
[11] GVNW Consulting Initial Comments at 3.
[12] AT&T Initial Comments at 13.

of confronting competition from a variety of competitors using multiple technologies. These include wireless carriers, cable companies, Internet service providers, high-speed data carriers, and state-run telecommunications providers. These same carriers have carrier of last resort obligations and their customers expect and continue to receive reliable and adequate service. The promises and the universal service goals of Section 254 of the Act are largely achieved as a result of a degree of stability provided through rate of return regulation.

Mandatory incentive regulation has the potential to undermine universal service in areas that will never attract multiple competitors. The Commission should therefore heed the majority recommendation above and allow ROR carriers the full option of maintaining ROR regulation and the ability to choose the exact time when, if at all, to transition into a new alternative regulation plan.

II. THE FCC SHOULD REFRAIN FROM MERGING LONG TERM SUPPORT INTO INTERSTATE COMMON LINE SUPPORT PENDING A REVEIW OF THE EFFECTS OF THE MAG ORDER ON ROR CARRIERS.

NTCA supports NECA's recommendation requesting the Commission not to merge long term support (LTS) into interstate common line support (ICLS) until it has completed a review of the effects of access reform on rural carriers.[14] As NECA points out, ROR carriers continue to participate in the NECA common line pool for purposes of computing and filing end-users common line charges, special access surcharges and non-analog line port costs. Also, the common line pooling and settlement mechanisms allow small carriers to continue to maintain stable monthly common line revenue flows pending

[13] WorldCom Initial Comments at 1-3; Sprint Initial Comments at 1-4, and 6-7; CUSC Initial Comments at 3-5.

revenue true-ups associated with the ICLS mechanism.[15] Therefore, retaining the LTS rules pending a review will assure that pool participation remains high and provide carriers the ability to avoid unnecessary administrative burdens and costs associated with monthly revenue fluctuations from changing cost and revenue projections and true-ups. This will be very important during the early years of the implementation of the MAG Order, as ROR carriers adjust to significant changes in universal service support and access charge reform scheduled to take place during this period.

Retaining the current LTS rules pending a review will also not disadvantage low-cost common line carriers, whose LTS, or lack of LTS, is not a significant factor in deciding whether to exit the common line pool. These carriers will have other options, such as subscriber line charge (SLC) rate banding and SLC deaveraging, which will permit them to charge rates closer to their own costs while still remaining in the pool. For these reasons, NTCA agrees with NECA's recommendation and urges the Commission to maintain the current LTS rules pending a review of the impacts of the MAG Order and other rule changes on ROR carriers.

III. ALL-OR-NOTHING RULE SHOULD BE ELIMINATED FOR ALL SINGLE STUDY AREA ROR CARRIERS AND MULTI-STUDY AREA ROR CARRIERS SEEKING TO KEEP ALL THEIR STUDY AREAS UNDER RATE-OF RETUN REGULATION.

The majority of initial comments filed in this proceeding that address the all-or-nothing rules request that the Commission repeal the rule.[16] The commentors requesting that the Commission retain the all-or-nothing rule focus their arguments on the ability of

[14] NECA Initial Comments at 3.
[15] *Id*. at 13.
[16] NTCA Initial Comments at 7-8; ALLTEL Initial Comments 29-32; ICORE Initial Comments at 13-15; Puerto Rico Telephone Company Initial Comments at 7-12; and Verizon Initial Comments at 4-6.

carriers to game the system by shifting costs between their incentive regulation affiliates and ROR affiliates.[17] These arguments, however, do not apply to ROR carriers and multi-study area ROR carriers seeking to keep all of their exchanges and study areas regulated under rate-of-return regulation. The potential for gaming the system or shifting costs between ROR and price cap affiliates therefore does not exist and the rule serves no legitimate purpose when applied to these companies. The Commission therefore should no longer require ROR carriers to bear the cost of filing a waiver petition every time they acquire an exchange, and instead allow them to file a letter with the FCC after the purchase of a new exchange indicating that they will include the new exchange in its existing study area and operate all their exchanges under ROR regulation.

IV. THE COMMISSION SHOULD ALLOW ROR CARRIERS ADDITIONAL PRICING FLEXIBILITY.

The majority of initial comments filed in this proceeding generally agree that the Commission should provide ROR carriers with immediate additional pricing flexibility upon adoption of an order in this proceeding and that pricing flexibility not be based on some predetermined level of competition or on a carrier's transition into an incentive regulation plan.[18] Unlike large, price-cap carriers, rate of return carriers are vulnerable at any level of competition. The loss of one large-volume user can have a devastating impact on the small carrier. Rate of return carriers must therefore have flexibility in anticipation of competition. Flexibility in response to competition will be too late.

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[17] AT&T Initial Comments at 15-18; Sprint Initial Comments at 6-7; WorldCom Initial Comments at 4; and CUSC Initial Comments at 5-7.

[18] ITTA Initial Comments at 7-10; TCA Initial Comments at 4-6; ICORE Initial Comments at p. 16; NECA Initial Comments at 9-10; NTCA Initial Comments at 8-10; and NRTA, OPASTCO and USTA Initial Comments at 17-21.

AT&T's, GCI's, CUSC's and WorldCom's claims that rate of return carriers would abuse a pricing flexibility option are unfounded and purely speculative.[19] Rate of return carriers are rate regulated and there are current accounting procedures and regulatory structures to prevent abuse. And, any competitor suspecting abuse could file a Section 208 complaint against the offending carrier for any alleged abuse.

IV. CONCLUSION

Based on the above reply comments and its initial comments, NTCA recommends that ensure competitive neutrality the Commission should: (1) make any incentive regulation plan adopted in this proceeding fully optional for all ROR carriers; (2) retain LTS under current rules, (3) eliminate the all-or-nothing rule for single study area ROR carriers and multi-study area ROR carriers seeking to keep all of their exchanges and study areas regulated under rate-of-return regulation; and (4) allow ROR carriers additional pricing flexibility.

Respectfully submitted,

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[19] AT&T Initial Comments at 19-24; GCI Initial Comments at 10-16; CUSC Initial Comments at 7-9; and WorldCom Initial Comments at 4.

March 18, 2002

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 00-256, FCC 01-304 was served on this 18th of March 2002 by first-class, U.S. Mail, postage prepaid, to the following persons:

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