

**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. 98-77
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)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS**

L. Marie Guillory
Daniel Mitchell

4121 Wilson Boulevard
10th Floor
Arlington, VA 22203

March 18, 2002

**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
)	

**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

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"

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

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 REVIEW 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 RETURN 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 commentators 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. National Telecommunications Cooperative Assn. 7
March 18, 2002
CC Dockets 00-256,
96-45, 98-77 and 98-166
FCC 01-304

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.

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,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: /s/ L. Marie Guillory
L. Marie Guillory

By: /s/ Daniel Mitchell
Daniel Mitchell

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

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:

/s/ Gail C. Malloy

Gail C. Malloy

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8B201
Washington, D.C. 20554

William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington D.C. 20554

Jeffrey H. Smith
GVNW Inc./Management
8050 S.W. Warm Springs Street
Suite 200
Tualatin, Oregon 97062

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Jan F. Reimer, President
ICORE, Inc.
326 S. Second Street
Emmaus, PA 18049

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Charles C. Hunter, Esq.
Catherine M. Hannan, Esq.
Hunter Communications Law Group
1424 Sixteenth Street, N.W., Suite 105
Washington, D.C. 20036

Qualex International
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Richard Juhnke, Esq.
Norina Moy, Esq.
Sprint Corporation
401 9th Street, N.W., #400
Washington, D.C. 20004

Margot Smiley Humphrey, Esq.
Holly Rachel Smith, Esq.
Holland & Knight, LLP
2100 Pennsylvania Avenue, N.W.
Suite 40
Washington, D.C. 20036

Stuart Polikoff
Stephen Pastorkovich
OPASTCO
21 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036

Lawrence E. Sarjeant, Esq.
David Cohen, Esq.
United States Telecom Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Chris Barron
TCA, Inc. – Telecom Consulting
Associates
1465 Kelly Johnson Blvd, Suite 200
Colorado Springs, Colorado 80920

John T. Nakahata, Esq.
Timothy J. Simeone, Esq.
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

Mark C. Rosenblum, Esq.
Judy Sello, Esq.
AT&T
295 North Maple Ave., Room 3252J1
Basking Ridge, NJ 07920

James R. Jackson
General Communication, Inc.
2550 Danali Street
Suite 10000
Anchorage, AK 99503

Gene A. DeJordy, Esq.
Mark S. Rubin, Esq.
Western Wireless Corporation
401 9th Street, N.W., Suite 550
Washington, D.C. 20004

Michael E. Glover
Edward Shakin
Of Counsel
Lawrence W. Katz, Esq.
Verizon
1515 North Court House Road
Suite 500
Arlington, VA 22201

Alan Buzacott, Esq.
WorldCom, Inc
1133 19th Street, N.W.
Washington, D.C. 20005

Herbert E. Marks, Esq.
Bruce A. Olcott, Esq.
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Box 407
Washington, D.C. 20044

Gregg J. Kinkley
Department of Commerce and
Consumer Affairs
STATE OF HAWAII
250 South King Street
Honolulu, Hawaii 96813

Diane Smith
David Bartlett
ALLTEL Communications Services
Corporation
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, D.C. 20005

Jeffrey S. Glover
John F. Jones
CENTURYTEL, INC.
100 Century Park Drive
Monroe, Louisiana 71203

James D. Ogg
Michael T. Skrivan
Madison River Communications
103 South 5th Street
Mebane, NC 27302

Kevin Hess
Robert J. DeBroux
TDS Telecom
301 South Westfield Road
Madison, WI 53717-1799

Karen Brinkmann, Esq.
Richard R. Cameron
Latham & Watkins
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004

Richard A. Askoff, Esq.
Regina McNeil, Esq.
Martha West, Senior Regulatory
Manager
National Exchange Carrier Association,
Inc.
80 South Jefferson Road
Whippany, NJ 07981

David L. Sieradzki, Esq.
Michele C. Farquhar, Esq.
Ronnie London, Esq.
Hogan & Hartson LLP
555 13th Street, N.W.
Washington, D.C. 20004

John T. Nakahata, Esq.
Michael G. Grable, Esq.
Harris, Wiltshire & Grannis LLP
1200 18th Street, N.W.
Washington, D.C. 20036

Frederick W. Hitz, III, Esq.
James R. Jackson, Esq.
General Communications, Inc.
2550 Denali Street, Suite 1000
Anchorage, Alaska 99503

David W. Zesiger, Executive Director
Independent Telephone &
Telecommunication Alliance
1300 Connecticut Ave., N.W., Suite 600
Washington, D.C. 20036

Karen Brinkmann, Esq.
Richard R. Cameron, Esq.
Latham & Watkins
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304

James P. Young, Esq.
Christopher T. Shenk, Esq.
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005

Gene A. DeJordy, Esq.
Mark S. Rubin, Esq.
Western Wireless Corporation
401 9th Street, N.W., Suite 550
Washington, D.C. 20004

Gerald J. Duffy, Esq.
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

Paul M. Schudel, Esq.
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508

Robert M. Halperin, Esq.
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

John W. Katz, Esq.
Special Counsel to the Governor
Director, State-Federal Relations
Office of the State of Alaska
Suite 336
444 North Capitol Street, N.W.
Washington, D.C. 20001

Joe D. Edge, Esq.
Tina M. Pidgeon, Esq.
Drinker Biddle & Reath LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005