

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
2002 Biennial Review of the Telecommunications)	WC Docket No. 02-313
Regulations Within the Purview of the Wireline)	
Competition Bureau)	

COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

L. Marie Guillory
Jill Canfield

Its Attorneys

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

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SUMMARY

The National Telecommunications Cooperative Association (NTCA) submits these comments in response to the Commission's biennial review. The Commission has indicated that it will go beyond the minimal statutory requirements and not limit its review to whether meaningful economic competition alone justifies change, but will also consider situations where repeal or modification of rules would serve the public interest.

NTCA proposes several rule changes that would serve the public interest and lessen the administrative and regulatory burdens imposed on small, rural local exchange carriers. Consistent with comments filed in other proceedings and pending petitions for reconsideration, NTCA recommends the following: 1) the Commission modify its definition of study areas under Part 36 and change rule 61.31(c) to make it simpler for rural carriers to consummate the purchase of neighboring exchanges; 2) the Commission modify section 52.33 to allow non local number portable (LNP) capable carriers to recover carrier-specific LNP-related costs through normal accounting and separations processes; 3) equal access be added to the list of services that are eligible for universal service support; 4) section 54.903 be modified to permanently lessen the burdens associated with ICLS data reporting; 5) the Commission amend rule 1.711 to include a \$0.42 presumptively reasonable per subscriber listing rate for small and rural telephone companies; 6) the Commission streamline and simplify the process for receiving rural health care support; and 7) eliminate Rule 54.305 to permit rate of return carriers to receive universal service support for acquired exchanges.

All of these rule changes were proposed in prior proceedings. The Commission should take this opportunity to act on them.

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**COMMENTS
OF THE
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The National Telecommunications Cooperative Association (NTCA)¹ hereby submits its comments in response to the Commission’s request for suggestions from the public as to what rules should be modified or repealed as part of the 2002 biennial review. Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. § 161, requires the Commission to (1) review biennially its regulations “that apply to the operations or activities of any provider of telecommunications service,” and (2) to “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between the providers of such service.”

The Commission has indicated that it will go beyond the minimal statutory requirements and not limit its review to whether meaningful economic competition alone

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 555 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members also provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). And all of NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

justifies changes. It will instead consider any justification to modify or eliminate a rule that would serve the public interest.

NTCA makes several recommended rule changes that will lessen administrative and regulatory burdens, thus serving the public interest. NTCA submits that the Commission should take the opportunity presented by the biennial review and finally address the following: 1) it should modify its definition of study areas under Part 36, and change rule 61.31(c) to make it simpler for rural carriers to consummate the purchase of neighboring exchanges; 2) it should modify § 52.33 to allow non local number portable (LNP) capable carriers to recover carrier-specific LNP-related costs through normal accounting and separations processes; 3) equal access should be added to the list of services that are eligible for universal service support; 4) Section 54.903 should be modified to permanently lessen the burdens associated with ICLS data reporting; 5) it should amend rule 1.711 to include a \$0.42 presumptively reasonable per subscriber listing rate for small and rural telephone companies; 6) it should streamline and simplify the process for receiving rural health care support and modify its definition of “urban”; and 7) the “parent trap rule” of § 54.305 should be eliminated to permit rate of return carriers to receive universal service support for acquired exchanges. These suggested rule changes will go a long way in lessening the burdens on small carriers and many will increase competitive opportunities.

I. THE COMMISSION SHOULD MODIFY ITS RULES TO MAKE IT SIMPLER FOR RURAL CARRIERS TO CONSUMMATE PURCHASES OF NEIGHBORING EXCHANGES

Currently, if a rural telephone company acquires a neighboring exchange, it must often file numerous requests for waiver of Commission rules. First, a rural carrier must

seek a waiver of the Commission's frozen study area boundaries under Part 36 to add the acquired exchange to its existing study area. The rural carrier must also seek waiver of Rule 61.31(c), the so-called "all or nothing rule" to keep all of their study areas under rate-of-return regulation. Since these waiver requests are routinely granted and serve no purpose other than to create additional burdens for the small carrier, the Commission should amend its rules to simplify the process by eliminating the need for waiver requests.

Part 36 of the Commission's rules freezes the definition of a "study area" to the boundaries that were in existence on November 15, 1984. In enacting the freeze, the Commission expressed concern that local exchange carriers (LECs) would set up high cost exchanges within their service territories as separate study areas to maximize high cost support. Recognizing that a freeze would not be appropriate in all circumstances, the Commission established a three-prong test for deciding whether study area waivers should be granted.

The Commission should now do away with its three-prong test. When a rural telephone company acquires a neighboring exchange, the public interest is served by permitting the company to incorporate the exchange into its existing study area. The transfer of the exchange expands the local calling areas for the customers affected, often converting what was once a toll call to essential services, such as schools and hospitals, into a local call. For this reason, the Commission routinely grants study area waiver requests.

Rather than filing study area waiver requests, the rural telephone company should be required to do no more than file a letter with the Commission indicating that it will incorporate the newly acquired exchange into its existing study area boundaries.

Similarly, the “all-or-nothing” rule of § 61.31(c) should not apply to single study area rate of return carriers and multi-study area rate of return carrier seeking to keep all of their exchanges and study areas regulated under rate of return regulation. Small, rural telephone companies do not acquire entire study areas from other carriers. They acquire neighboring exchanges in the rural areas of large ILEC study areas and then seek a waiver from price cap regulation to include the acquired exchanges into their rate of return regulated study areas.

The purpose of the all-or-nothing rule is to prevent a carrier from shifting costs from its price cap affiliate to its rate of return affiliate, allowing the rate of return affiliate to charge higher prices due to increased costs, while also increasing profits of the price cap affiliate as a result of cost savings. The rule also seeks to prevent carriers from gaming the system by switching back and forth between rate of return regulation and price cap regulation.

Since single study rate of return carriers and multi-study area rate of return carriers seeking to keep all study areas under rate of return regulation would not operate separate affiliates under two different types of regulation, the potential for gaming the system or shifting costs between rate of return and price cap affiliates does not exist. The all-or-nothing rule therefore serves no legitimate purpose when applied to these rural carriers. The Commission should therefore eliminate the all-or-nothing rule or exempt rate of return carriers from it.

The waiver process is a costly burden. Study area waivers and the waiver of the all-or-nothing rule are routinely granted because they serve no legitimate purpose when applied to small, rural carriers. Eliminating the waiver process in these instances and

permitting rural carriers to file no more than a letter of notification will reduce carrier costs and relieve the Commission of unnecessary administrative burden.

II. THE COMMISSION'S RULES SHOULD BE MODIFIED TO ALLOW NON-LNP CAPABLE ILECS TO RECOVER CARRIER-SPECIFIC LNP-RELATED COSTS THROUGH NORMAL ACCOUNTING AND SEPARATIONS PROCESSES

The Commission rules currently provide many ILECS with no ability to recover their on-going costs related to local number portability (LNP). Section 52.33 of the Commission's rules limits cost recovery by non-LNP capable ILECs to those that serve areas outside of the largest 100 MSAs and participate in an EAS arrangement with a LNP-capable carrier. Non-LNP capable ILECs that do not fit that narrow criteria are left without any mechanism to recover on-going and mounting LNP-related costs.

LNP-related costs include the costs of supporting regional Number Portability Administration Centers and N-1 query costs for intraLATA toll calls. These costs are normal network costs, not LNP implementation costs. Therefore, they should be recoverable via normal separations and access charge mechanisms.² The Commission should modify 47 C.F.R. § 52.33 to permit all non-LNP capable ILECs to recover carrier-specific ongoing LNP-related costs through normal accounting and separations processes.

III. THE COMMISSION SHOULD STRIVE FOR REGULATORY PARITY AND ADD EQUAL ACCESS TO THE LIST OF SERVICES THAT ARE ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT

As it stands today, rural ILECs are required to provide consumers with equal access to long distance carriers and their services.³ Wireless carriers are not required to and do not offer this equal access. As a result, wireless carriers have a distinct competitive

advantage. They are permitted to compete directly against rural ILECs, but do not incur the cost of providing equal access. Not only is the consumer deprived of the ability to choose its long distance provider when making a wireless call, the regulatory discrepancy is inconsistent with the Commission's stated goal of minimizing disparities so that "no entity receives an unfair competitive advantage that may skin the marketplace."⁴

Equal access provides consumers with the direct benefit of being able to choose any long distance provider offering service in their community without switching their local phone company. Equal access fits squarely in the universal service criteria put forth in Section 254(c) of the Act and provides immediate and tangible benefits to the American public.⁵

Adding equal access to the list of services that are eligible for universal service support would help reduce the regulatory disparity between incumbents and wireless competitors. It would also help to ensure that no entity receives an unfair advantage because its competitor is subject to the additional regulatory requirements and costs associated with providing equal access.

IV. THE COMMISSION SHOULD MODIFY ITS RULES TO PERMANENTLY LESSEN THE BURDENS ASSOCIATED WITH ICLS DATA REPORTING

The Commission's November 2001 MAG Order⁶ established the rules for the submission of ICLS data. In response to pressure from industry representatives and in an

² See, In the Matter of Telephone Number Portability, CC Docket No. 95-116, Petition for Reconsideration filed by the National Exchange Carrier Association, Inc. (July 15, 2002).

³ 47 C.F.R. §251(g)

⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8802, (1997) (*Universal Service First Report and Order*).

⁵ See, NTCA's comments filed in CC Docket No. 96-45, FCC 01-J-1 (Nov 13, 2001), *see also*, NTCA comments in CC Docket No. 02-39, FCC 02-57 (May 10, 2002).

⁶ 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

effort to lessen administrative burdens on small companies, the Commission extended the submission date for initial ICLS data projections from March 31, 2002 to April 18, 2002 and limited the scope of data submissions to the six data items actually needed to calculate ICLS amounts. NECA submitted these data on behalf of pooling companies.⁷ In a later order, the Commission also revised the ICLS data reporting rules to eliminate an unnecessary certification requirement and permitted adjustment of Long Term Support payments to reflect ICLS amounts.⁸

Today, a number of ICLS data collection issues remain unsolved and the Commission should act quickly to minimize carrier confusion and burdens. Section 54.903(a)(3) should be revised to permanently specify the data items needed to calculate ICLS amounts. The current rule requires only that carriers are to report their interstate common line revenue requirement. The Commission should specify the data items to be submitted, incorporating the same six data items specified in the *First Order on Reconsideration*. Section 54.903(a)(3) also currently creates just a 10-day window between the time that initial ICLS data projections are due and the time that corrections or updates to these projections are due. This is not enough time. The update window should be extended by

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, *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*, 16 FCC Rcd 19613 (2001) (MAG Order).

⁷ Multi-Association (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket NO. 00-256, *First Order on Reconsideration in CC Docket No. 00-256, Twenty-Fourth Order on Reconsideration in CC Docket No. 96-45*, 17 FCC Rcd 5635 (2002) (*First Order on Reconsideration*).

⁸ Multi-Association Group (MAG) Plan for Regulation 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, *Order and Second Order on Reconsideration*, 17 FCC Rcd 11593 (2002).

just over two months to June 30, providing adequate time to incorporate data from NECA's annual access tariff filing, and any revisions to the average schedule formulas.

Further, the Commission should revise section 54.903(a)(4) to require carriers to submit actual ICLS data by December 31 of each year, rather than July 31st. According to NECA, only about one-third of companies complete cost studies by July 31 of each year. Another one-third complete their studies by October. The date of completion often rests on matters outside of a company's control. The final ICLS submission date should be extended to December 31, providing every company with enough time to complete and submit its study.

V. THE FCC SHOULD AMEND RULE 1.711 TO INCLUDE A \$0.42 PRESUMPTIVELY REASONABLE PER SUBSCRIBER LISTING RATE FOR SMALL AND RURAL TELEPHONE COMPANIES

In 1999, the Commission determined that \$0.04 per listing for base file subscriber list information and \$0.06 per listing for updated subscriber list information is presumptively reasonable.⁹ The Commission based its rates on information contained in letters supplied by US West, Bell Atlantic, Ameritech, BellSouth and Southwestern Bell Telephone Company.

In November 1999, NTCA petitioned the FCC to reconsider its presumptively reasonable rate.¹⁰ NTCA pointed out that the Commission failed to adequately consider the needs of small and rural telephone companies. The \$0.04 per subscriber list rate fails

⁹ In the Matters of Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, and the Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended, *Third Report and Order*, CC Dockets 96-115, 96-98 and 99-273, FCC 99-227 rel. September 9, 1999.

¹⁰ In the Matters of Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, *NTCA Petition for Reconsideration*, CC Docket No. 96-115, CC Docket No. 99-273, FCC 99-227 (filed November 4, 1999).

not only to recover the incremental cost for small carriers, but also fails to provide for any contribution to overheads and common costs for providing subscriber list information to directory publishers. NTCA presented concrete evidence based on a NTCA member survey that \$0.42 was a reasonable rate to be charge by small and rural telephone companies.

The Commission should use this biennial review to finally address this issue and amend its rules to allow for the continued development of a competitive directory publishing market in rural America while fairly compensating rural carriers for the subscriber list information they provide.

VI. THE COMMISSION SHOULD STREAMLINE AND SIMPLIFY THE PROCESS FOR RECEIVING RURAL HEALTH CARE SUPPORT AND MODIFY ITS DEFINITION OF URBAN

As NTCA previously pointed out in its comments to the Commission, the current process for receiving rural health care support discourages participation in this valuable program.¹¹ The Commission can encourage more health care providers to use the program if: 1) applicants are able to reasonably calculate the level of discount they will receive; and 2) the Commission modifies its definition of “urban.”

Currently, when a rural health care provider files Form 465 with the administrator, it cannot know the discount for which it will qualify. The applicant is forced to complete application forms and produce proof of urban rates. USAC then calculates the Maximum Allowable Distance to determine the level of support. The health care profession is notoriously under-funded and understaffed and the blindfolded application process

¹¹See, NTCA comments, Rural Health Care Support Mechanism, *Notice of Proposed Rulemaking*, WC Docket No. 02-60, FCC 02-122 (filed July 1, 2002).

discourages participation in the rural health care support program. Few are willing to spend the time, money and effort needed to apply for a program with unknown benefit.

The Commission should encourage participation in the rural health care support program by providing applicants with a reasonable estimate of the benefit they will receive by filing.¹² The Commission may accomplish this by publishing the SUD for each state, making it available to rural health care providers, tying non-distance based support to the urban rate in the nearest city of at least 100,000 people, and requiring the state PUCs to publish the rate.

If the Commission continues to base rural health care discounts on the difference between urban and rural rates, it should modify its definition of urban. Currently, distance-based support is calculated by comparing rates of rural areas and the nearest town of at least 50,000. However, the rates in rural areas and small cities of 50,000 are comparable. If the Commission instead compared rural areas to cities of at least 100,000, it would get a more accurate contrast between rural and urban. Defining urban as a city of at least 100,000 would increase the level of discounts available to rural health care providers and increase participation in the program.

VII. THE COMMISSION SHOULD ELIMINATE ITS “PARENT TRAP RULE” AND PERMIT RATE OF RETURN CARRIERS TO RECEIVE UNIVERSAL SERVICE SUPPORT FOR ACQUIRED EXCHANGES

Currently, when a carrier acquires an exchange from an unaffiliated carrier, it may receive only the same per-line levels of intrastate high-cost universal service support for which the acquired exchange was eligible prior to the transfer.¹³ Often, the amount of

¹² *Id.*, pp. 4-5.

¹³ 47 C.F.R. § 54.305(a).

support under this so-called “parent trap rule” is zero because the transferred exchange was previously served by a large carrier that also serves major metropolitan areas. The rule was adopted as a temporary measure to prevent a potential increase in the acquiring carrier’s universal service support payments from unduly influencing its decision to acquire exchanges.¹⁴

However, this “temporary” measure serves to deprive customers who happen to receive service from an acquiring carrier of much needed upgrades. A purchasing carrier should be encouraged to begin, rather than prevented from beginning, necessary investment and improvements to property immediately upon acquisition of a rural exchange.

The Commission determined that section 54.305 would not apply to Interstate Common Line Support (ICLS) because ICLS for rate of return carriers and interstate access universal service support for price cap carriers will both be based at least in part on an individual carrier’s embedded costs.¹⁵

Rather than simply apply the “parent trap rule” to high cost support, the Commission should consider NTCA’s proposal in NTCA’s Petition for Reconsideration and Clarification of the MAG Order.¹⁶ NTCA proposed that the Commission amend its rules by defining the index year expense adjustment as the selling carrier’s expense adjustment at the time of the sale of the exchange. The acquiring carrier’s first year

¹⁴ *Universal Service First Report and Order*, 12 FCC Rcd 8942-43.

¹⁵ MAG Order, *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*, ¶ 157. (rel. Nov. 8, 2001).

¹⁶ NTCA Petition for Reconsideration and Clarification, Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket Nos. 96-45, 00-256 (filed July 5, 2001).

expense adjustment for the acquired exchange would then be compared to the seller's index year expense adjustment to determine any positive difference eligible for safety valve support in the acquiring carrier's first year of operations. Every subsequent year of operations would then be compared to the acquiring carrier's first year expense adjustment. The proposed rule changes would create the proper incentive for rural carriers to invest in the acquired exchange without delay and would provide consumers living in these underserved and unserved rural exchanges with improved service within the first year after the acquisition.

VIII. CONCLUSION

Each of NTCA's suggested rule revisions would serve the public interest by significantly reducing the administrative or regulatory burdens of small and rural incumbent local exchange carriers. Most of the issues have been outstanding for quite some time, some for several years, creating uncertainty and unnecessary filings. The Commission should use the opportunity presented by the biennial review to finally address these outstanding issues.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: /s/ L. Marie Guillory
L. Marie Guillory
(703) 351-2021

By: /s/ Jill Canfield
Jill Canfield
(703) 351-2020

Its Attorneys

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

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WC Docket No. 02-313, FCC 02-267 was served on this 18th day of October 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy
Gail Malloy

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

Room CY-B402
Washington, D.C. 20554

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

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

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

Qualex International Portals II
445 12th Street, S.W.