December 11, 2002

NOTICE OF EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW B204
Washington, DC 20554

Re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket Nos. 00-256, 96-45, 98-77, 98-166

Dear Ms. Dortch:

The attached written *Ex Parte* Presentation concerning the above-referenced proceeding was sent to the Honorable Michael K. Powell, the Honorable Kathleen Q. Abernathy, the Honorable Michael Copps, the Honorable Kevin Martin and the Honorable Jonathan Adelstein by Walter B. McCormick, Jr., President and CEO of the United States Telecom Association (USTA). In accordance with FCC Rule 1.1206(b)(1)[1], this Notice of *Ex Parte* Presentation and a copy of the referenced *Ex Parte* Presentation are being filed with you electronically for inclusion in the public record. Should you have any questions, please contact me at (202) 326-7300.

Sincerely,

/s/
Lawrence E. Sarjeant
Vice President Law &
General Counsel

cc: Matthew Brill
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
Lisa Zaina
William Maher

[1] 47 C.F.R. § 1.1206(b)(1).

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Walter B. McCormick, Jr.
President and Chief Executive Officer

December 11, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8 B201
Washington, DC 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8 B115
Washington, DC 20554

The Honorable Michael Copps
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8 A302
Washington, DC 20554

The Honorable Kevin Martin
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8 A204
Washington, DC 20554

The Honorable Jonathan Adelstein
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8 C302
Washington, DC 20554

***EX PARTE* PRESENTATION**
(submitted electronically)

Re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket Nos. 00-256, 96-45, 98-77, 98-166

Dear Commissioners:

The United States Telecom Association (USTA) urges the Federal Communications Commission (Commission or FCC) to eliminate the Commission's price cap "All-or-Nothing" rules (Section

61.41).[2] USTA has urged the Commission to do the same in this proceeding[3] and numerous others,[4] and USTA believes it is appropriate and necessary to reiterate its support for eliminating the rules as the Commission continues its consideration of this matter.

The "All-or-Nothing" rules and other related rules unnecessarily regulate carriers on a one-size-fits-all basis. Specifically, the rules require a rate-of-return carrier that acquires or merges with a price cap company (or vice versa) to convert to price cap regulation within one year;[5] require all affiliates (except average schedule companies with fewer than 50,000 lines) of a local exchange carrier (LEC) that file a price cap tariff to file price cap tariffs for their interstate rates;[6] preclude exchanges that become subject to price cap regulation from withdrawing from such regulation even upon sale of those exchanges to a new owner (*i.e.*, the "One-Way Door" rule);[7] and require a LEC to withdraw all of its study areas from the National Exchange Carrier Association (NECA) common line pool if the LEC chooses to withdraw one of its study areas from the pool in order to file its own carrier common line tariff.[8] These rules are unduly restrictive because they compel carriers to select one form of regulation that may not be appropriate for both its high-cost and low-cost affiliates.

The "All-or-Nothing" and other related rules do not provide small and mid-sized carriers with the necessary flexibility to meet the demands of today's competitive marketplace. In fact, the rules discourage small and mid-sized rural carriers from acquiring rural access lines from larger price cap companies and from making capital investments to improve rural access lines and to offer new and advanced services to consumers. The rules must be eliminated so that small and mid-sized carriers are encouraged to continue making such acquisitions and investments, which benefit consumers in rural areas. Rate-of-return LECs must have the flexibility to operate their affiliates under the form of regulation that is most efficient and least restrictive for updating network technology, meeting customer demand, and ultimately remaining competitive.

It is imperative that the Commission acknowledge that the concern that prompted the "All-or-Nothing" rules – improper cost shifting between a price cap affiliate and a rate-of-return affiliate – has not materialized. In fact, the Commission has effectively acknowledged this on many occasions by consistently granting requests for waiver of these rules.[9] Furthermore, there

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[2] *See* 47 C.F.R. §61.41.

[3] *See generally Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing Services of Local Exchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Comments of NRTA, OPASTCO and USTA (Feb. 14, 2002) (Joint Comments).

[4] *See Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission's Rules*, WCB/Pricing 02-26, Comments of the United States Telecom Association (Oct. 10, 2002), *Biennial Review 2002*, WC Docket No. 02-313, WT Docket No. 02-310, Comments of the United States Telecom Association (Oct. 18, 2002), *Biennial Review 2002*, WC Docket No. 02-313, WT Docket No. 02-310, Reply Comments of the United States Telecom Association (Nov. 4, 2002).

[5] *See* 47 C.F.R. §61.41(c)(2).

[6] *See* 47 §C.F.R. §61.41(b).

[7] *See* 47 C.F.R. §61.41(d).

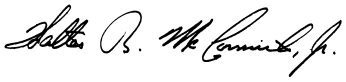
[8] *See* 47 C.F.R. §69.3(e)(9).

[9] *See e.g.*, *ALLTEL Corporation Petition for Waiver of Section 61.41, ALLTEL Corporation Petition to Extend Interim Waiver of Section 61.41 of the Commission's Rules, CenturyTel, Inc. and CenturyTel of Alabama, LLC Petition for Waiver of Sections 61.41(b) and (c) of the Commission's Rules, Puerto Rico Telephone Company Petition for Waiver of Section 61.41 of the Commission's Rules or, in the Alternative, Request for Waiver of Section 54.303(a) of the Commission's Rules*, Memorandum Opinion and Order, CCB/CPD Nos. 01-28, 99-01, 01-36, 01-30, 99-36 (rel. Apr. 18, 2002).

are already numerous safeguards other than the "All-or-Nothing" rules, which detect and prevent improper cost-shifting between price cap and rate-of-return affiliates. For example, the Commission subjects incumbent LECs to numerous rules on accounting, separations, regulated versus unregulated services, maintaining cost allocation manuals, affiliate transactions, and tariffing requirements. In addition, state regulatory agencies subject carriers to many regulatory checks on their operations. Both the Commission and state regulatory agencies have effective enforcement tools available to address any abuses of their rules. Likewise, the National Exchange Carrier Association scrutinizes cost studies submitted by its pool members. Finally, the status of competition, particularly the growth of wireless competition, does not provide LECs with a safe harbor to which costs can be shifted and recovered. All of these measures and situations guard against improper cost shifting.[10] Accordingly, it is time to stop making small and mid-sized carriers jump through unnecessary regulatory hoops of complying with rules for which there is no purpose and requesting waivers for such rules.

The Commission should act now to eliminate the "All-or-Nothing" and other related rules (*i.e.*, 47 C.F.R. Sections 61.41(c)(2), 61.41(b), 61.41(d), and 69.3(e)(9)), allowing small and mid-sized rural carriers to operate with regulatory flexibility as necessary to invest in acquisition and improvement of rural access lines for consumers.

Sincerely,



Walter B. McCormick, Jr.

cc: Matthew Brill
Eric Einhorn
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[10] *See* Joint Comments at 11-12.