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September 12, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* in CC Docket Nos. 00-256, 96-45, 98-77 and 98-166

Dear Ms. Dortch,

On Thursday, September 11, 2003, Mick Jensen and Mike Urdahl, representatives of Great Plains Communications, Inc., Steven Watkins of this office, and I met with Commissioner Jonathan S. Adelstein and Legal Advisor Scott Bergmann. The subjects of the discussion were the pending Petitions for Reconsideration filed by the "Alliance of Independent Rural Telephone Companies" and the "Plains Independent Companies" in the above-referenced proceedings. The specific points discussed are set forth in the attached documents which were provided to Commissioner Adelstein and Mr. Bergmann.

Please direct any questions regarding this to me at (202)296-9055.

Sincerely,

s/Stephen G. Kraskin
Stephen G. Kraskin

cc: Commissioner Jonathan S. Adelstein
Scott Bergmann, Esq.

Attachment

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September 11, 2003 *Ex Parte Presentation* of the Alliance of Independent Rural Telephone Companies Petition for Reconsideration of the "MAG Order," CC Docket Nos. 00-256, 96-45, 98-77, and 98-166

The Alliance of Independent Rural Telephone Companies ("Alliance") petitioned the Commission to reconsider and rescind the adoption of rule modifications regarding three specific *MAG Order* determinations:

(1) the *MAG Order* improperly requires that all non-traffic sensitive ("NTS") carrier common line ("CCL") costs must be recovered from either end user charges or a new form of universal service support mechanism;

(2) the *MAG Order* improperly requires that subscriber line charge ("SLC") caps for rate-of-return carriers should be increased to the levels established for price-cap carriers; and

(3) the *MAG Order* improperly determines that rural rate-of-return LECs are required to recover universal service contributions only through end user charges.

The Alliance seeks reconsideration of these aspects of the Commission's *MAG Order* because they are in conflict with the policy objectives of the Communications Act of 1934, as amended. The Act seeks reductions in rates paid by consumers; <u>but, the *MAG Order* produces increases in rural consumers' telephone service bills without providing any tangible consumer benefits</u>. The Act seeks to encourage carrier investment in higher quality services and advanced technologies; <u>but, the *MAG Order* results in an unstable environment for rural rate-of-return carriers and, thereby, discourages investment.</u>

In the absence of the requested reconsideration, the *MAG Order* modifies the Commission's rules in a manner that departs from established law, public policy and Commission practice. In reconsidering these issues, the Alliance respectfully suggests that the Commission should be guided by three **<u>existing</u>** fundamental policy principles:

(1) a rural rate-of-return LEC should be permitted to establish rates for interstate access services that recover its interstate access costs;

(2) rural customers should not pay rates that unreasonably support services provided to other customers; and

(3) rates for services should reflect a carrier's costs in order to provide appropriate market signals that enable prospective entrants to assess whether to enter a particular market.

Although the *MAG Order* acknowledges these principles, the order adopts policy and rule changes that are inconsistent.

The results of the *MAG Order* appear driven toward a predetermined agenda — reductions in rural carrier access charges without regard for the specific characteristics and needs of rural consumers and rural carriers. While the *MAG* proceeding was initiated to consider a specific rural carrier association consensus proposal for rural access structures and universal service, the *MAG Order* rejected the proposal and adopted rule modifications in the absence of opportunity for comment or consideration and development of alternative rate design structures that would work in concert with the objectives of the Act.

In the absence of the requested reconsideration, the *MAG Order* is contrary to the statutory and policy goals of securing lower prices for consumers, securing higher quality services, and encouraging the rapid deployment of new telecommunications technologies.

September 11, 2003 *Ex Parte* Presentation
of the
Plains Independent Companies

Petition for Reconsideration
Filed December 31, 2001
of the "MAG Order"
CC Docket Nos 00-256, 96-45, 98-77, 98-166

Background

The MAG Order required that traffic sensitive costs formerly recovered through the Transport Interconnection Charge ("TIC") be reallocated across all interstate access elements. This change results in the allocation of approximately one-half of the costs formerly recovered via the TIC to the Common Line Element. This change results in actual traffic sensitive costs being allocated to the Common Line Element, and consequently to the Interstate Common Line Support ("ICLS") fund. The change results in interstate traffic sensitive rates that do not fully recover the actual level of transport costs. The change results in a larger ICLS Universal Service support fund than is necessary and warranted.

Reconsideration

The Independents asked the Commission to reevaluate this change because the MAG requirement results in the arbitrary treatment of specifically identifiable traffic sensitive costs as if these costs are non-traffic sensitive common line costs. Contrary to the suggestions in the MAG order, the costs that over history have been recovered through the TIC can be specifically identified and evaluated. The costs that have been recovered via the TIC do not include any non-traffic sensitive costs. Once evaluated properly, these costs should continue to be recovered through proper traffic sensitive elements and should not be improperly included in common line universal service funding.

The MAG Order's analysis of price cap companies' treatment of access rates is not relevant or comparable to the rate-of-return companies because changes in the rates of price cap have proceeded according to price indices that are not related to components of costs.

Resolution

The Independents ask the Commission to reconsider this aspect of the MAG Order according to the following steps:

1. Reverse the improper reallocation of the traffic sensitive TIC recovery to the common line element. While analysis of cost components is underway, the traffic sensitive TIC should be reinstated.

2. Traffic sensitive tandem switching costs should be specifically identified and recovered via the tandem switching element without the removal of an arbitrary percentage of costs as required by the MAG Order.

3. The rates for direct-trunked transport and the transmission portion of tandem switching should be based on the actual costs of providing these functions pursuant to the Commission's Parts 32, 36, and 69 Rules.

4. The remaining costs, if any, not identified in the steps above should be reevaluated in the context of a Joint Board jurisdictional cost allocation proceeding.

A reallocation of the TIC charges to the actual traffic sensitive transport and tandem switching elements is the proper approach consistent with the nature of the actual functions. This recommendation for reconsideration is consistent with the Commission's own conclusions in the MAG Order (para. 12) that rate-of-return carriers would "retain the flexibility to establish rates based on their own costs in the areas they serve, rather than being forced to conform to a prescribed target rate."