Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Elimination of Rate of Return Regulation of Incumbent Local Exchange Carriers	)	RM-10822
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

Comments of the Montana Telecommunications Association

I. Introduction and Summary

The Montana Telecommunications Association (MTA) represents independent cooperative and commercial rural local exchange companies that provide a full spectrum of basic and advanced telecommunications services to consumers throughout Montana.

MTA contends that the Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers ("Petition") of Western Wireless Corporation (WWC) is premature at best. The matters WWC brings before the Commission already are pending in other proceedings before the Commission. Moreover, WWC's assertions are misplaced, and its recommendations if adopted would lead to long term negative consequences for rural consumers in Montana and throughout the Nation.

MTA therefore strongly urges the Commission to deny WWC's Petition.

II. Proceedings before the Commission

WWC notes in its Petition the "following closely related, pending and soon-to-be-initiated rulemaking proceedings:"[1]

- First, the rulemaking proposed here is closely related to the pending *Joint Board Portability Proceedin*g, which addresses "the methodology for calculating support for ETCs" – including incumbent as well as competitive ETCs – "in competitive study areas."[2] …Given the relationship among these issues*, Western Wireless would support a referral to the Federal-State Joint Board on Universal Service of many of the issues discussed here*. *Western Wireless would also support referral of related separations issues to the Federal-State Joint Board on Separations*. (Emphasis added.)
- Second, the rulemaking sought here raises issues that are highly relevant to the forthcoming "comprehensive review of the high-cost mechanisms for rural and non-rural carriers as a whole…"[3]
- Third, the rulemaking sought here dovetails with the Further Notice of Proposed Rulemaking accompanying the *Tenth Circuit Remand Orde*r...[4]
- Fourth, [WWC references the Commission's intercarrier compensation proceeding].[5]
- Finally, the recently opened Total Element Long-Run Incremental Cost ("TELRIC") review proceeding will address forward-looking costing questions that may also be relevant …[6]

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[1] Before the Federal Communications Commission. *Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers* ("Petition"). RM-10822, CC Docket No. 96-45. Gene A. DeJordy, et al., Western Wireless Corporation. October 30, 2003. pp. 6-7.

[2] *Portability Referral Orde*r, 17 FCC Rcd at 22645-46, ¶ 7; *Joint Board Portability Public Notic*e, 18 FCC Rcd at 1948, ¶ 15. WWC alleges that "This rulemaking proceeding would develop a comprehensive record for the establishment of a new high-cost support system for all ETCs *in lieu of ROR regulation*…" (Emphasis added). MTA finds no such mandate given to the Joint Board.

[3] *Federal-State Joint Board on Universal Servic*e, Fourteenth Report and Order, 16 FCC Rcd 11244, 11310, ¶ 169 (2001) ("*RTF Orde*r").

[4] *Federal-State Joint Board on Universal Service,* Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-249, ¶ 127 ("*Tenth Circuit Remand Order FNPR*M") October 27, 2003.

[5] *Developing a Unified Intercarrier Compensation Regim*e, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) ("*Intercarrier Compensation Notic*e").

[6] *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, 18 FCC Rcd 18945 (2003) ("TELRIC NPRM").

MTA concurs that a variety of on-going proceedings at the Commission addresses issues raised by WWC in its Petition. Additionally, the Commission is involved with a number of proceedings, including, among others, deployment of broadband telecommunications, all of which have a direct effect on the ability of rural telecommunications carriers to continue to provide consumers with access to comparable, quality services at just and reasonable rates.[7]

The Commission should deny WWC's Petition if for no other reason than the host of currently pending proceedings before the Commission which address issues raised by WWC relating to investment in, and provision of, quality telecommunications services to rural America.

III. WWC's Assertions and Assumptions are Invalid

WWC implies, as it has on numerous other occasions, that universal service is intended to promote competition. It further argues that rate of return (RoR) regulation inflates universal service support, resulting in less competition and innovation. As an alternative to RoR regulation, WWC proposes adoption of a forward-looking cost mechanism for rural carriers.

As noted above, the Commission is considering these arguments in a variety of proceedings. However, MTA cannot allow WWC to lob such misrepresentations into the public domain without at least a minimal response.

First, and foremost, the Telecommunications Act specifically distinguishes between promotion of universal service and promotion of competition. Section 254 of the Act directs the Commission to "base policies for preservation and

[7] 47 U.S.C. §254(b). "The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles: (1) *Quality services should be available at just, reasonable and affordable rates.* (2) *Access to advanced telecommunications and information services* should be provided in all regions of the Nation. (3) Consumers in all regions of the Nation, including low-income consumers *and those in rural, insular, and high cost areas should have access to telecommunications and information services*, including interexchange and advanced telecommunications and information services, that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas…" (Emphasis added.)

advancement of universal service," not competition.[8] Moreover, even Section 214, which provides under certain conditions designation of multiple eligible telecommunications carriers (ETCs), clearly sets a higher bar for designation of competitive ETCs in rural areas, recognizing the extenuating circumstances faced by rural high cost carriers and the consumers residing in our Nation's rural communities.[9]

Second, a two-year study conducted on behalf of the Joint Board on Universal Service by the Rural Task Force (comprising representatives from across the telecommunications industry, including WWC's Gene DeJordy, co-author of WWC's Petition), concluded:

> There is a substantial "rural difference" between the operational scope and markets in the approximately 1,300 study areas served by Rural Carriers and their non-Rural Carrier counterparts. These operational and market distinctions underlie sections of the 1996 Act which *explicitly apply different regulatory standards to Rural Carriers for universal service, designating Eligible telecommunications Carriers, interconnection and competitive entry*. Indeed, the fact that the operations of Rural Carriers and the markets they serve are distinct from those of large, urban oriented non-Rural Carriers underlies the rationale for the formation of this Rural Task Force.[10] (Emphasis added.)

Third, contrary to WWC's implications, competition and innovation are alive and well in America's rural markets. Significant portions of Montana's telecommunications markets are served by at least two telecommunications carriers, one or two wireline carriers and between one and three wireless carriers, including in many cases, WWC. Further, Montana's rural telecommunications carriers have deployed broadband DSL service to 200 Montana communities; and over 120 Montana communities host advanced videoconference facilities deployed by rural carriers to provide rural Montana with

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[8] 47 U.S.C. §254. id.

[9] 47 U.S.C. §214(e). "(1) A common carrier designated as an eligible telecommunications carrier…shall be eligible to receive universal service support *in accordance with section 254*…(2) …Upon request and *consistent with the public interest, convenience and necessity*, [a] state commission…*may, in the case of an area served by a rural telephone company*…designate more than one common carrier as an eligible telecommunications carrier…(emphasis added).

[10] The Rural Task Force. "The Rural Difference" White Paper 2. www.wutc.wa.gov/rtf. January, 2000.

a host of distance education and telemedicine capabilities.[11] (*See Appendix 1 for list of Montana communities served with DSL*.) This level of investment and commitment to rural America is exemplified by Montana's rural independent telecommunications companies.[12] Further, these examples do not include similar investment, innovation and services provided by other telecommunications companies operating in Montana, including competitive local exchange carriers, or wireless, cable, interexchange, and Bell companies. In short, WWC's allegation that innovation and competition are thwarted just doesn't add up.

Fourth, WWC contends RoR regulation is "broke," and speculatively places its faith in a forward-looking cost mechanism "fix it." However, as noted above, consumers served by rural carriers are benefiting from a high degree of innovation and service quality. Moreover, evidence from telecommunications markets served by carriers operating under a forward-looking, model-based approach advocated by WWC is far from compelling. In these markets, it does not appear that consumers enjoy substantial improvements in service quality, investment or access to advanced services. Indeed, the opposite appears to be the case, particularly in the case of rural markets.[13] As the Commission's TELRIC Notice states, "we seek comment on an approach that bases [prices and support] on a cost inquiry that is more firmly *rooted in the real-word attributes of the existing network, rather than the speculative attributes of a purely hypothetical network*."[14] (Emphasis added.)

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[11] It should be noted that the largest city in Montana, Billings, has a population of 100,000. The communities served by DSL and videoconference facilities therefore are small by any standard. In fact, most of the communities referenced have populations of less than 1,000. In addition, every Native American Reservation in Montana hosts at least one of the videoconference facilities mentioned herein.

[12] MTA annually hosts a trade show with over 100 vendors of state of the art telecommunications products and services. Telecommunications carriers from Montana and surrounding states participate in the trade show and invest in the advanced products and services exhibited. (See Appendix 2 for a listing of vendors that exhibited at MTA's 2003 trade show, held December 3-4, 2003.)

[13] The use of economic "models" is particularly problematic, as the Rural Task Force pointed out in its White Paper 4, September, 2000, p.8. "the result of errors or radical changes in the amount of explicit support developed from the model which is imprecise at the company level could cause an individual rural carrier to either gain a substantial windfall, or have a serious deficiency in 'sufficient' support."

IV. Conclusion

The Commission should deny WWC's Petition on the basis that matters WWC brings to the Commission are being considered in a variety of proceedings currently before the Commission.

Moreover, the assertions WWC makes in its Petition are misdirected; and, if embraced by the Commission, could lead to a host of unintended consequences, among which would be less, not more, investment, innovation and delivery of quality service to consumers residing and working in rural America.

Respectfully Submitted

/s/

Geoffrey A. Feiss, General Manager
Montana Telecommunications Association
208 North Montana Avenue, Suite 207
Helena, Montana 59601
406.442.4316
gfeiss@telecomassn.org

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[14] TELRIC NPRM. Id. ¶4.

APPENDIX 1: MONTANA COMMUNITIES SERVED WITH DSL BY MONTANA'S INDEPENDENT CARRIERS.

3 RIVERS TEL. CO-OP, FAIRFIELD**
3rivers.net
Belt, Big Sky, Bozeman, Browning, Choteau, Conrad, Ennis, Fairfield, Ft.Shaw, Great Falls, Highwood, Neihart, Pendroy, Power, Reynesford, Sheridan, Twin Bridges, Valier, Virginia City,

BLACKFOOT TEL. CO-OP, MISSOULA
blackfoot.net
Alberton, Arlee, Avon, Charlo, Clinton, Condon, Dixon, Drummond, Haugan, Missoula, Noxon, Ovando, Petty Creek, Philipsburg, Plains, Potomac, St. Ignatius, St.Regis, Seeley Lake, Superior, Thompson Falls

CENTRAL MONTANA TEL. CO., HAVRE
ttc-cmc.net
Denton, Dodson, Ft. Benton, Geraldine, Harlem, Harlowton, Hobson, Judith Gap, Malta, Martinsdale, Moore, Stanford, White Sulphur Springs

CENTURYTEL, KALISPELL
CenturyTel.net
Big Fork, Columbia Falls, Elmo, Finley Point, Hungry Horse, Kalispell, Lakeside, Marion, McGregor Lake, Olney, Polson, Somers, Swan Lake, Whitefish, Woods Bay, Yellow Bay

HOT SPRINGS TEL. CO., HOT SPRINGS
hotspgs.net
Hot Springs

INTERBEL TEL. CO-OP, EUREKA
interbel.net
Eureka, Fortine, Rexford, Trego, West Kootenai

LINCOLN TELEPHONE CO., LINCOLN
linctel.net
Canyon Creek, Lincoln

MID-RIVERS COMMUNICATIONS, CIRCLE
midrivers.com
Baker, Circle, Custer, Ekalaka, Fairview*, Glendive*, Grass Range, Jordan, Lambert, Lavina, Melstone, Miles City, Musselshell, Plevna, Richey, Roundup, Roy, Ryegate, Savage, Shepherd, Sidney, Terry, West Glendive, Wibaux, Winnett

NEMONT TEL. CO-OP, SCOBEY.
nemontel.net

Bainville, Brockton, Culbertson, Dagmar, Flaxville, Ft. Peck, Frazer, Froid, Glasgow – North, Hinsdale, Larslan, Medicine Lake, Nashua, Opheim, Peerless Saco, St. Marie, Scobey, Scobey Rural, Westby

NORTHERN TEL. CO-OP, SUNBURST
northerntel.net
Cut Bank, Devon, Ethridge, Galata, Kevin, Lothair, Oilmont, Shelby, Sunburst, Sweetgrass, Whitlash

PROJECT TEL. CO., SCOBEY
nemontel.net
Absarokee, Belfry, Crow Agency, Fishtail, Fort Kipp, Fort Smith, Huntley, Lodge Grass, Nye, Poverty Ridge, St. Xavier, Wolf Point – Airport Addition, Worden, Wyola

RANGE TELEPHONE COOP., FORSYTH
rangetel.coop
Ashland, Broadus, Forsyth, Hathaway, Hysham, Rosebud, SE Sheridan

RONAN TEL. CO., RONAN
ronantelco.com
Pablo, Ronan

SOUTHERN MONTANA TEL. CO., WISDOM
smtel.com
Divide, Grant, Jackson, Wisdom, Wise River

TRIANGLE TEL. CO-OP, HAVRE
ttc-cmc.net
Big Sandy, Big Timber, Box Elder, Broadview, Chester, Chester-South, Chinook, Gildford, Havre,-North, Havre-South, Hingham, Hopp Illiad, Joplin, Kremlin, Loma, Malta-South, Melville, Molt, Rapelje, Reedpoint, Rudyard, Simpson, Turner, Whitewater, Winifred, Zortman

VALLEY TELECOMMUNICATIONS, SCOBEY
nemontel.net
Glasgow, Plentywood, Poplar, Wolf Point

Appendix 2: List of Vendors at MTA's 2003 Trade Show, December 3-4, 2003.

MTA Showcase Attendees
3M Communications
Action Battery
ADC Telecommunications
Advanced Fibre Communications
Alamon Telco, Inc.
Allied Telesyn
ALLTEL Communications Products
Belden Communications Division
Border States Electric
Bourns Inc.
Calix
Catena Networks
CBM, Inc.
Cisco Systems
Clark Safety & Loss Control
Communications Data Group
Comstock Telcom
Conklin-Intracom
Copper Mountain Networks
CopperCom
CORE Telecom Systems
Cutthroat Communications
Delta Energy Systems
Ditch Witch of Montana
DSG
Eagle Marketing
Eastern Research
Falcon Communications
Finley Engineering
Fire Guys Leasing
Fire Suppression Systems
Fujitsu Network Communications
General Cable

MTA Showcase Attendees
Gluon Networks
GoDigital Networks
Graybar
Great Plains Towers Inc.
Heberly & Associates
Hutton Communications
Innovative Systems
JKL Associates, Inc.
LightRiver Technologies
Marconi
Martin Group
MetaSwitch
Mid-America Computer Corp.
Minerva Networks
Motorola Next Level Comm.
NECA
Net to Net Technologies
NISC
Norcom, division of Pacific Star Comm.
Nortel Networks
NTRC
Occam Networks
Optical Solutions
Paradyne Corporation
Power & Telephone Supply Co.
Power Product Services
Prime Networks
Quintrex Data Systems Corp.
RepCom International
RM Sales & Marketing
Rocky Mountain West Telecom
Selbys
SERO Networks
Sprint North Supply

MTA Showcase Attendees
Superior Essex
Taqua
Tekelec
Tekno Telecom, LLC
Telect
Telephone Switching International
TeleSphere
TelStrat
ThinRoute Technologies
Thomas & Betts
Tri West Sales
TSI/Emerson
Turin Networks Inc.
TW Enterprises
Tyco
Utilities Underground Location Center
Vantage Point Solutions
Vermeer Rocky Mountain
Vision Fire & Security
Wave7Optics
Zhone Technologies