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 Nebraska Rural Independent Companies

I. Introduction

The Nebraska Rural Independent Companies[1] (the "Nebraska Companies") hereby submit comments in the above captioned proceeding. The Nebraska Companies appreciate the opportunity to comment on the petition for rulemaking to eliminate rate-of-return ("ROR") regulation of incumbent local exchange carriers ("ILECs") submitted by Western Wireless Corporation.[2]

The Western Wireless Petition asks the Federal Communications Commission ("Commission") to base federal universal service support on a forward-looking cost methodology.[3] The Western Wireless Petition also requests that the Commission set

[1] Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

[2] See *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822 and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers, Western Wireless Corporation (*"Western Wireless Petition"*) (filed Oct. 30, 2003).

[3] Id. at p. ii.

rural local exchange carrier ("LEC") access rates using a method other than ROR, such as price cap mechanisms or generic intercarrier compensation rules.[4] The Nebraska Companies believe that the Commission currently has proceedings open that address the aforementioned issues raised by the Western Wireless Petition. Furthermore, the Western Wireless Petition presents a distorted view of ROR ratemaking, pointing out the alleged flaws in the ROR methodology, while not recognizing the shortcomings of its alternative proposals to the ROR methodology. Therefore, the Nebraska Companies recommend that the Commission dismiss the Western Wireless Petition for rulemaking.

II. The Issues Raised by the Western Wireless Petition are being Addressed in Other Open Proceedings; Therefore, Opening Another Rulemaking is Unnecessary and Inappropriate.

The Commission has referred to the Federal-State Joint Board on Universal Service ("Joint Board") the issue of the amount of universal service support that should be paid to eligible telecommunications carriers ("ETCs") in study areas in which a competitive ETC ("CETC") is operating and seeking federal universal service support.[5] The Joint Board has received comments and reply comments on the issue. In its questions regarding this issue, the Joint Board stated:

> In addition, we seek comment on other methods of determining high-cost support for ETCs in competitive study areas. For example, should support in competitive areas be based on the lowest-cost provider's costs, in order to promote efficiency?[6]

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[4] Ibid.

[5] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) at para. 7.

[6] *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) at para. 19.

In forming an answer to this question, Western Wireless was allowed an opportunity to propose to the Joint Board, and subsequently to the Commission, Western Wireless' recommendation that a forward-looking cost-based system should be used to determine universal service support. In fact, Western Wireless availed itself of this opportunity, filing both comments[7] and reply comments[8] in this proceeding, in which it made such a recommendation. Furthermore, Western Wireless indicates that the request in its petition to replace ROR regulation is "closely related" to this proceeding.[9]

The Joint Board is expected to make a recommendation to the Commission in February 2004 regarding the amount of universal service support that should be paid in study areas that have CETCs, as well as on other issues that were referred to the Joint Board.[10] The Commission asks for comment on recommendations from the Joint Board prior to issuing a decision on matters that the Commission referred to the Joint Board. Therefore, the question of how the amount of universal support that should be paid in study areas that have CETCs should be determined is still open, and there will be additional opportunities to comment on this question. Given that this matter is still before the Commission, the opening of a rulemaking to answer the same question would be redundant and is unnecessary.

In its order modifying the rules for interstate access charges for ILECs subject to ROR regulation, commonly referred to as the *MAG Order*, the Commission also opened a

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[7] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Western Wireless Corporation (filed May 5, 2003) at p. 7, Attachments H and I.

[8] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Reply Comments of Western Wireless Corporation (filed June 3, 2003) at pp. 7-27.

[9] *Western Wireless Petition* at p. 6.

[10] *See* Washington Watch, January 12, 2004, available at: http://www.neca.org/source/neca_160_1161.asp.

Notice of Proposed Rulemaking ("NPRM") in which it sought comment on alternative regulatory structures to the rules it had just adopted for interstate access charges for ROR carriers.[11] In the NPRM, the Commission stated that "[a]n alternative regulation plan initially must ensure that rates remain just and reasonable, as required by section 201(b)."[12] The Commission then invited comment ". . . on how this goal might be realized most effectively with regard to rate-of-return carriers, and *whether something akin to the price cap methods should be used*, or whether some other effective alternative exists."[13] (emphasis added) The Commission has received comments and reply comments on this question and other questions it posed regarding alternative regulatory structures to set interstate access rates for ROR carriers. The Commission has not rendered a decision on this issue and the proceeding remains open at this time. Therefore, the Nebraska Companies believe that the opening of a rulemaking to address alternative regulatory structures to set interstate access rates for ROR carriers is not necessary.

Finally, Western Wireless acknowledges in its petition that the Commission currently has a proceeding open regarding intercarrier compensation.[14] Any recommendations Western Wireless has regarding intercarrier compensation issues would

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[11] *See 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, and *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, FCC 01-304 (*"MAG Order"*) (rel. Nov. 8, 2001) at paras. 213-240.

[12] Id. at para. 221.

[13] Ibid.

[14] *See Western Wireless Petition* at footnote 10.

be made appropriately in the context of that proceeding. The opening of a rulemaking to address such issues is unnecessary.

III. The Western Wireless Petition Presents a Distorted View of ROR Ratemaking and the Alternatives to ROR Ratemaking.

Western Wireless paints a distorted picture by repeating the alleged flaws of ROR ratemaking throughout its petition, while extolling the virtues of its proposals to replace ROR regulation. The Nebraska Companies wish to point out concerns that have been previously raised concerning many of the proposals made by Western Wireless, in order to present a more balanced view of alternatives to ROR regulation.

The Commission has Indicated it Must Balance All Goals in Implementing the Telecommunications Act of 1996 ("the Act").

Western Wireless makes several statements in the beginning of its petition that seem to indicate that it believes the promotion of competition is the only goal the Commission should pursue in determining rural LEC federal high-cost universal service support and access charges. These statements include "[t]his petition seeks to facilitate the transformation of the local telecommunication market from a monopoly to a *competitive environment*. . . ."[15] and "ROR regulation has outlived its time and must be replaced with a more appropriate form of regulation based upon today's *competitive environment*."[16] (emphasis added) In the *MAG Order*, in which the Commission revised its rules for the interstate access charge and universal service support systems for ROR carriers, the Commission indicated a very different view of its role in adopting policies regarding these issues. The Commission stated:

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[15] Id. at p. 1.

[16] Id. at p. 2.

> As the Commission observed in the *Interstate Access Support Order*, access charge and universal service reform presents a series of controversial and interrelated issues without a single, precise solution. "There are instead ranges of reasonable solutions," and *the Commission must select one that appropriately balances the competitive and universal service goals as set forth in the Act.* (emphasis added)[17]

The Commission also noted that:

> As we devise a transition to a more economically rational approach to access charges and universal service, *we need to balance various and sometimes conflicting interests – including promotion of competition, deregulation, maintaining affordability for all, and avoiding rate shock to consumers.* (emphasis added)[18]

These statements by the Commission appear to indicate it believes that in implementing the Act, it must balance the promotion of competition with universal service principles, which are often in conflict with the promotion of competition. The Nebraska Companies concur with this interpretation of proper implementation of the Act, and urge the Commission to balance conflicting goals in the Act when formulating policy, instead of placing the goal of promoting competition above all other goals in the Act.

The Commission has Indicated Potential Problems with Implementing Alternative Regulation for ROR Carriers.

Western Wireless suggests that the Commission should consider whether the existing price cap system that applies to non-rural ILECs should be applied to rural LECs. The Nebraska Companies believe that many of the pitfalls in trying to apply the price-cap system of regulation to rural LECs have already been pointed out by the

[17] *MAG Order* at para. 5.

[18] Id. at footnote 14.

Commission in the *MAG Order* NPRM. In discussing issues in developing an alternative regulatory plan, similar to price caps, the Commission noted that:

> Given the wide variations among rate-of-return carrier operating conditions, we believe it would be extremely difficult to establish a mandatory alternative regulatory plan for all rate-of-return carriers.[19]

In addition to the difficulty of attempting to design a "one size fits all" incentive regulation plan to set interstate access rates for ROR carriers, the Commission also noted other concerns in adopting incentive regulation for such carriers. The Commission indicated that:

> The design of an alternative regulation plan must also address *the incentives an alternative regulation plan gives rate-of-return carriers to reduce investment in plant and equipment, or to reduce expenditures on maintaining service quality*, in order to increase profits at the expense of maintaining adequate investment or service quality.[20] (emphasis added)

The Nebraska Companies believe that the Commission has correctly identified a potential pitfall of incentive regulation in this statement. In fact, the Nebraska Companies note that since the inception of price cap regulation, the only companies for which the Nebraska Public Service Commission has initiated proceedings to investigate service quality complaints are the two largest ILECs in the state, both of which are price cap carriers for purposes of setting interstate access rates.[21]

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[19] Id. at para. 227.

[20] Id. at para. 223.

[21] *See* Before the Nebraska Public Service Commission, *The Commission, on its own Motion, Seeking to Determine Whether the Retail Service Quality Provided by ALLTEL is Adequate*, Application No. C-2940, Order Opening Docket and Setting Service Quality Objectives, (entered May 7, 2003) and *The Nebraska Public Service Commission, on its own Motion for the General Supervision of the Progress of US West Communications, Inc.'s Plan to Improve Service to its Nebraska Customers*, Application No. C-1097, Order Opening Docket (entered Aug. 16, 1994).

Another concern the Commission identified in attempting to implement a regulatory system similar to price caps for ROR carriers is the difficulty of attempting to determine a productivity offset for such carriers. The productivity offset is used in the price cap mechanism to ensure that the benefits of productivity experienced by telecommunications carriers are passed along to consumers in the form of lower rates. In asking parties to comment on the extent to which a productivity offset should be used as a component of an alternative regulatory plan for ROR carriers, the Commission noted that:

> This is a difficult issue for rate-of-return carriers due to the variations in their operating conditions. Many smaller rate-of-return carriers' investment patterns are lumpy, with only occasional significant new investment, as when they replace a switch or a major trunking facility. Some rate-of-return carriers may not realize sufficient demand growth to realize any scale economies.[22]

The Nebraska Companies note that in designing price cap regulation, the Commission had initially proposed to make such regulation mandatory for all LECs with sustained regulated interstate revenues of at least $100 million (Tier 1 carriers).[23] However, after review of the comments and evidence, the Commission acknowledged that mid-size Tier 1 companies differed significantly from the largest eight companies in the size and scope of their operations and in the productivity they could be expected to achieve.[24] As indicated in comments on the MAG Plan, diversity among ROR carriers is even greater than among the carriers the Commission identified as potential price-cap

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[22] *MAG Order* at para. 235.

[23] *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd at 6818, para. 260 (1990).

[24] Ibid.

carriers.[25] Therefore, the Nebraska Companies believe, as suggested by the Commission statement above, that developing a reasonable productivity factor to represent all ROR carriers would be virtually impossible.

Western Wireless Suggestions for Computation of Universal Service Support are Contrary to the Record and Internally Inconsistent.

Western Wireless asserts that:

> While sparsely populated rural *areas* undoubtedly are more costly to serve, there is nothing unique about the rural *ILECs*, and no economically principled reason to provide differing amounts of high-cost support to small ILECs, large ILECs, or competitive ETCs, if the carriers serve similar or identical geographic areas.[26] (emphasis in original)

This statement is contrary to the finding of the Commission in the *RTF Order* modifying the rules for providing high-cost universal service support to rural telephone companies. In that order, the Commission indicated that:

> Even those commenters who urge the Commission to move to forward-looking cost for rural carriers recognize that the Commission would need additional time to develop suitable rural input values.[27]

The use of different input values would result in a different amount of support for small ILECs as compared to large ILECs, regardless of whether or not the same model platform was used.

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[25] *See 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, and *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Comments of the Plains Rural Independent Companies (filed Feb. 26, 2001) at pp. 5-6.

[26] *Western Wireless Petition* at pp. 23-24.

[27] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *and Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 (*"RTF Order"*) (rel. May 23, 2001) at para. 177.

Continuing differentiation between rural and non-rural carriers for universal service purposes is, in fact, consistent with Western Wireless' own statement that "[i]deally, regulation should neither create incentives for concentration nor create incentives for de-concentration, but should allow the marketplace to determine optimal size of telecommunications carriers."[28] If the lack of economies of scope and scale are not recognized for rural carriers in the universal service support mechanism, regulation will create incentives for concentration. This is because support amounts would be insufficient for small rural carriers, which would need to consolidate in order to gain the economies of scale and scope necessary to remain a going concern in business.

The Nebraska Companies agree that regulation should not create incentives for concentration or de-concentration in the telecommunications industry. However, Western Wireless' assertion that all carriers that serve similar rural areas should be paid the same amount of universal service support, regardless of their scale and scope, is inconsistent with a regulatory policy that does not create incentives for concentration.

Western Wireless Incorrectly Asserts that Rural ILECs Receive a Large Proportion of Their Revenues from Universal Service Funding and Access Charges Because They Maintain Unreasonably Low Retail Rates.

Western Wireless asserts that "[r]ural ILECs typically recover 50% to 75 % of their revenues from universal service funding and access charges. . . and a significant number of those carriers maintain unreasonably low retail rates."[29] Western Wireless characterizes the recovery of a significant proportion of total revenues from high-cost support and access charges by rural ILECs as an "unhealthy dependence" that eliminates

[28] *Western Wireless Petition* at footnote 4.

[29] Id. at p. 40.

"any incentive to be responsive to their own consumers' needs."[30] The Nebraska Companies believe that Western Wireless does not understand the nature of costs incurred in serving rural areas in making such an argument. As discussed below, many rural ILECs will need to continue to recover a large proportion of their total revenues from universal service funding and access, even if such ILECs raise their basic local service rates to affordable benchmark levels.

In Nebraska, all carriers that are designated by the Nebraska Public Service Commission ("NPSC") as Nebraska eligible telecommunications carriers ("NETCs") can receive state universal service support from the Nebraska Universal Service Fund ("NUSF"). One of the requirements for NETCs to receive NUSF support is that the NETCs must offer basic local exchange service at benchmark rates set by the NPSC.[31] The benchmark rate for residential basic local exchange service is $17.50 per month (not including the federal subscriber line charge, taxes, and surcharges), and the benchmark rate for business basic local exchange service is $27.50 per month.[32] In establishing the benchmarks, the NPSC noted that it adopted a higher benchmark rate for businesses due to ". . . the greater ability, on average, of a business to pay higher rates."[33] Thus, the NPSC considered affordability of rates to consumers in establishing the benchmark rates.

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[30] Ibid.

[31] *See The Nebraska Public Service Commission, on its own Motion, Seeking to Establish a Long-term Universal Service Funding Mechanism,* Application No. NUSF-26, Progression Order No. 2 (entered Aug. 27, 2003) at para. 76.

[32] *See The Application of the Nebraska Public Service Commission, on its own Motion, Seeking to Conduct an Investigation into Intrastate Access Charge Reform*, Application No. C-1628, Findings and Conclusions (entered Jan. 13, 1999) at p.6.

[33] Ibid.

Three rural Nebraska ILECs presented to the Commission the impact that the MAG plan would have had on the ILECs' distribution of total revenues prior to the adoption of the plan.[34] The presentation included charts illustrating the distribution of total ILEC revenues for each of the three rural Nebraska ILECs.[35] The charts indicate that, even after the implementation of SLC increases under the MAG Plan, the rural ILECs would continue to receive from about 56 percent to 81 percent of their revenues from universal service funding and access charges. These distributions reflect charges for basic local exchange service at the benchmark rates deemed affordable by the NPSC.[36]

The Nebraska Companies also note that the presentation indicated that the minimum monthly charge for residential basic local exchange, including taxes and surcharges, was $24.45 per month for rural Nebraska consumers, compared to a national average of $19.87 per month. This comparison was developed using the SLC rates that existed prior to the implementation of the MAG Plan. Therefore, the difference between rates paid by rural Nebraska consumers and the national average is now even greater than that illustrated in the ex parte presentation.

The foregoing information illustrates that even if rural ILECs raise their rates to benchmark levels that are considered affordable, many rural ILECs will continue to receive a large proportion of their total revenues from universal service funding and

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[34] *See* letter and accompanying material to Magalie Roman Salas, Secretary, from Lisa M Zaina, Vice President, Wallman Strategic Consulting, Inc., RE: CC Docket Nos. 00-256, 96-45, 98-77, 98-166, dated Apr. 18, 2001.

[35] The charts illustrated the distribution prior to and after the implementation of proposed increases of the Subscriber Line Charge contained in the MAG Plan.

[36] $17.50 per month for residential basic local exchange service, not including the SLC, taxes and surcharges.

access charges. The reliance of rural ILECs on universal service funding and access charges for sufficient cost recovery is not necessarily, as Western Wireless asserts, due to the charging of "unreasonably low retail rates" to rural ILEC customers.

IV. Conclusion

The Nebraska Companies oppose the Western Wireless Petition, and request that the Commission dismiss such petition. As the Commission observed:

> Rate-of-return regulation has worked well in extending service to rural America along with our universal service program and the work of state commissions to support service in these areas.[37]

This statement appears to indicate that the Commission does not consider its universal service program and rate-of-return regulation to be misguided policies as portrayed by Western Wireless. Furthermore, the issues raised by the Western Wireless Petition are currently being addressed in other open proceedings. Therefore, Western Wireless has available to it a means to make its recommendations as part of the official record, without opening another proceeding to address its concerns. The opening of another proceeding would be redundant and is not necessary.

Dated: January 16, 2004.

[37] *MAG Order* at para. 234.

Respectfully submitted,

The Nebraska Rural Independent Companies

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telephone Company,
Consolidated Telco, Inc.,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Company, Inc.,
Hooper Telephone Company,
K&M Telephone Company, Inc.,
NebCom, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Co.,
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