

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

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for	)	CC Docket No. 00-256
Regulation of Interstate Services of Non-Price	)	
Cap Incumbent Local Exchange Carriers and	)	
Interexchange Carriers	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	

**COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION AND SUMMARY**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Commission's Second Further Notice of Proposed Rulemaking (SFNPRM) in the Multi-Association Group (MAG) Plan proceeding.<sup>1</sup> OPASTCO is a national trade association representing over 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All

---

<sup>1</sup>*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, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 04-31 (rel. Feb. 26, 2004) (Order and SFNPRM).

of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

OPASTCO strongly supports the Commission's tentative conclusion to make optional for all rate-of-return (ROR) carriers any alternative regulation plans it may adopt and to permit carriers to elect participation in such plans by study area. Optionality on a study area basis is necessary to accommodate the diversity of ROR carrier operating conditions while also preserving sound incentives for investment and maintaining quality of service in rural areas.

The Commission should also allow ROR carriers to elect alternative regulation and remain in the National Exchange Carrier Association (NECA) pools. NECA has indicated that the use of rate banding techniques would accommodate incentive regulation within the pools in a manner which would address the Commission's concerns. Allowing carriers wishing to choose alternative regulation to remain in the pools would help keep the pools strong for all carriers. It would also result in more carriers electing alternative regulation that may not have considered it otherwise.

**II. THE COMMISSION SHOULD ADOPT ITS TENTATIVE CONCLUSION TO MAKE ALTERNATIVE REGULATION OPTIONAL FOR ALL ROR CARRIERS AND TO ALLOW CARRIERS TO ELECT PARTICIPATION ON A STUDY AREA BASIS**

OPASTCO commends the Commission for tentatively concluding that any alternative regulation plans that it may adopt will be optional for all ROR carriers.<sup>2</sup> In light of the wide variations in operating conditions among rural ILECs, the Commission is correct in its view that "it would not be possible to devise a plan suitable for mandatory

---

<sup>2</sup> Order and SFNPRM, para. 86.

imposition on all rate-of-return carriers.”<sup>3</sup> The Commission should proceed upon this sound premise, in order to ensure that all ROR carriers have the ability to select the regulatory option that would best suit its needs and the needs of its customers.

One of the central aims of the access charge reforms made as part of the MAG proceeding was to provide regulatory policies “tailored to the needs of small and mid-sized local telephone companies serving rural and high-cost areas” that would “help provide certainty and stability for rate-of-return carriers, encourage investment in rural America, and provide important consumer benefits.”<sup>4</sup> Suddenly forcing a carrier into a new regulatory mold would have the opposite effect on its incentives to invest and could deprive the consumers it serves of the benefits of evolving network capabilities and services. Therefore, any alternative regulatory plans the Commission may adopt should be entirely optional for all ROR carriers.

In addition, OPASTCO agrees with the Commission’s tentative conclusion that ROR carriers may elect participation in any alternative regulation plan by study area.<sup>5</sup> As the Commission correctly notes, since ROR holding company groups are composed of very diverse operating companies, such holding companies would not be able to elect incentive regulation if they had to do so on an “all-or-nothing” basis.<sup>6</sup>

---

<sup>3</sup> *Ibid.*

<sup>4</sup> 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, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19617, para. 3 (2001) (FNPRM).

<sup>5</sup> Order and SFNPRM, para. 86.

<sup>6</sup> *Ibid.*

The Commission already has before it a full and compelling record to justify its tentative conclusion not to apply the all-or-nothing rule to any potential alternative regulation plans. As noted earlier in this proceeding, the all-or-nothing rules are flawed since:

(1) they are inefficient and unduly restrictive because they force carriers to choose a form of regulation that may not suit either their high-cost or low-cost affiliates; (2) there is insufficient evidence of cost-shifting to justify the rules; and (3) the Commission could rely on accounting safeguards and other non-structural mechanisms to prevent cost-shifting, as it does in other contexts.<sup>7</sup>

Thus, each discrete operating ILEC should be allowed to adopt the form of regulation that best suits its respective conditions and characteristics.

### **III. ANY ALTERNATIVE REGULATION THAT THE COMMISSION MAY ADOPT SHOULD BE AVAILABLE TO CARRIERS THAT PARTICIPATE IN THE NECA POOLS**

The Commission states that it is concerned about the ability of NECA to insulate remaining pool members from the risk that may be introduced by some carriers choosing alternative regulation.<sup>8</sup> The Commission also suggests that allowing the pool member study areas of a ROR holding company to elect alternative regulation could make cost shifting more difficult to detect.<sup>9</sup> However, NECA has indicated that the pools can be adapted to support the proposed incentive regulation plans in a manner that addresses the Commission's concerns.

Specifically, existing rate banding techniques used by NECA would assure that customers of pooling companies choosing alternative regulation would benefit from cost

---

<sup>7</sup> FNPRM, 16 FCC Rcd 19720, para. 264.

<sup>8</sup> Order and SFNPRM, para. 91.

<sup>9</sup> *Ibid.*

efficiencies. Rate banding would allow low cost companies to remain in the pools, while also charging lower than average rates to their customers. Contrary to the concerns of the Commission about increasing the potential risk exposure for pool members, allowing carriers wishing to elect alternative regulation to remain in the pools would help to keep the pools strong, by improving the stability of monthly cash flows for all pooling carriers.

Furthermore, NECA's rate banding process would also provide sufficient protection against improper cost shifting. Under rate banding, pool participants have strong incentives to keep costs low so as to avoid "moving up" to higher rate band levels. As an additional safeguard, pool data submissions are subject to extensive cost study reviews that are in addition to reviews that occur in the context of the Commission's access tariff proceedings.

In sum, ROR study areas should not be forced to give up the advantages of pooling in order to elect alternative regulation. Pooling provides risk sharing and administrative benefits that continue to be important to many small and rural ILECs. Were ROR carriers required to exit the NECA pools in order to elect incentive regulation, it is likely that many carriers for which such regulation may have been appropriate would not be willing to adopt it. Thus, alternative regulation that disallows participation in the pools will not be an alternative worth considering for many small, rural ILECs.

#### IV. CONCLUSION

Any alternative regulation plans that the Commission may adopt for ROR carriers must be entirely optional and electable on a study area basis. This will allow each carrier to choose a form of regulation that is best suited for their particular operating environment and enable them to continue to provide high quality service to their customers. In addition, carriers that wish to elect alternative regulation should be able to do so within the NECA pools. Alternative regulation can indeed be accommodated in the pools without undermining their integrity. By allowing NECA to make the necessary accommodations, the Commission will make alternative regulation a viable choice for more small, rural carriers.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
PROMOTION AND ADVANCEMENT OF  
SMALL TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff  
Stuart Polikoff  
Director of Government Relations

By: /s/ Jeffrey W. Smith  
Jeffrey W. Smith  
Policy Analyst

OPASTCO  
21 Dupont Circle NW  
Suite 700  
Washington, DC 20036  
(202)659-5990

April 23, 2004

## **CERTIFICATE OF SERVICE**

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 23<sup>rd</sup> day of April, 2004, to those listed on the attached list.

By: /s/ Jeffrey W. Smith  
Jeffrey W. Smith

## **SERVICE LIST**

**CC Docket Nos. 00-256 and 96-45  
FCC 04-31**

Tamara Preiss, Chief  
Pricing Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Richard Askoff  
Regina McNeil  
National Exchange Carrier Association  
80 South Jefferson Road  
Whippany, NJ 07981

Qualex International  
Portals II  
445 12<sup>th</sup> Street SW  
Washington, DC 20554